TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 437

CARTER H. HARRISON, COLLECTOR OF INTERNAL REVENUE FOR THE FIRST DISTRICT OF ILLINOIS, PETITIONER

vs.

SARAH H. SCHAFFNER

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 14, 1940
CERTIORARI GRANTED NOVEMBER 12, 1940

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IN THE

United States Circuit Court of Appeals
For the Seventh Circuit

No. 7139

SARA H. SCHAFFNER,
Plaintiff-Appellee,

vs.

CARTER H. HARRISON, COLLECTOR OF INTERNAL REVENUE FOR THE FIRST DISTRICT OF ILLINOIS,
Defendant-Appellant.

Counsel for Plaintiff-Appellee:
MR. CARL MEYER,
MR. HERBERT A. FRIEDLICH,
MR. LOUIS A. KOHN.

Counsel for Defendant-Appellant:
MR. SAMUEL O. CLARK, JR.,
MR. SEWALL KEY.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

J-15603 The Gunthorp-Warren Printing Company, Chicago—12-28-39—35

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INDEX.

1 Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court Room, in the City of Chicago, in said District and Division, before the Honorable James H. Wilkerson, District Judge of the United States for the Northern District of Illinois on Seventh day of July, in the year of our Lord one thousand nine hundred and Thirty-Nine, being one of the days of the regular July Term of said Court, begun Monday, the Third day of July, and of our Independence the 164th year. Placita.

Present:

Honorable James H. Wilkerson, District Judge.
William H. McDonnell, U. S. Marshal.
Hoyt King, Clerk.

2 IN THE DISTRICT COURT OF THE UNITED STATES,

Northern District of Illinois,

Eastern Division.

Sara H. Schaffner
vs.
Carter H. Harrison, Collector of Internal Revenue for the First District of Illinois. } No. 47134.

Be It Remembered, that the above-entitled action was commenced by the filing of the following Complaint in the above-entitled cause in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, on this the Seventh day of May, A. D. 1938.

Filed May 7, 1938. 3 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—47134) * *

COMPLAINT.

To the Honorable Judges of Said District Court:

Plaintiff, Sara H. Schaffner, respectfully represents:

1. That at the date of the institution of this suit, and at all other times herein mentioned, plaintiff was and now is a citizen of the State of Illinois and a resident of the City of Chicago in said State, and that said City of Chicago is in the First Internal Revenue District of Illinois.

2. That Robert E. Neely, from and after January 26, 1931, until his term of office expired on November 15, 1931, was the duly qualified and acting Collector of Internal Revenue of the United States in and for the First District of Illinois; that Gregory T. Van Meter, from and after November 16, 1931, until his term of office expired on August 20, 1933, was the duly qualified and acting

4 Collector of Internal Revenue of the United States in and for the First District of Illinois, and that since said dates, they, respectively, have not held such office or been or acted as such collectors; and that from August 21, 1933, the defendant, Carter H. Harrison, has been and he now is the duly qualified and acting Collector of In-

ternal Revenue of the United States in and for the First District of Illinois.

3. That said suit herein and the cause of action herein set forth against said defendant and the cause of action upon which said suit is based, arises under the laws of the United States providing for Internal Revenue for said United States.

4 That on March 15, 1931, the plaintiff, pursuant to the provisions of an Act of Congress approved May 29, 1928, and known as the Revenue Act of 1928, filed with said Robert E. Neely, then acting Collector of Internal Revenue as aforesaid, a duly executed income tax return, on Form 1040, disclosing an income tax liability for the calendar year 1930 in the amount of $23,392.88. That plaintiff paid said tax as follows: to said Robert E. Neely, then acting Collector of Internal Revenue on March 16, 1931, $6,892.88; on June 15, 1931, $5,500.00; on September 14, 1931, $5,500.00; and to said Gregory T. Van Meter, then acting Collector of Internal Revenue, on December 14, 1931, $5,500.00.

5 5. That on March 15, 1932, the plaintiff, pursuant to the provisions of said Revenue Act of 1928, filed with said Gregory T. Van Meter, then acting Collector of Internal Revenue, a duly executed income tax return, on Form 1040, disclosing she had a Federal income tax liability for the calendar year 1931 in the amount of $5,253.05. That plaintiff paid said tax to said Gregory T. Van Meter, then acting Collector of Internal Revenue, as follows: On March 15, 1932, $2,253.05; on June 15, 1932 $1,000.00; on September 15, 1932, $1,000.00; and on December 15, 1932, $1,000.00.

6. That the plaintiff was, at all times herein mentioned, and now is, the life beneficiary under a testamentary residuary trust established by the sixteenth section of the Will of her deceased husband, Joseph Schaffner; a copy of said will is attached hereto, made a part hereof and marked Exhibit "A"; that on December 23, 1929, plaintiff, as permitted by said will, executed and delivered certain absolute and unconditional assignments of respective portions of the income, as should equal the following respective sums, from and out of the net income that might might be derived during the calendar year 1930 from said testamentary residuary trust created by said will, and therein directed to be paid over to plaintiff for and during her natural life, as follows: $36,000.00 assigned absolutely to her daughter, Halle S. Weil (now

deceased); $30,000.00 assigned absolutely to her daughter, Margaret S. Marx; and $18,000.00 assigned absolutely to her son, Joseph H. Schaffner; a copy of each of said
6 assignments is attached hereto, made a part hereof and marked Exhibits "B", "C" and "D" respectively. That on November 14, 1930, plaintiff as permitted by said will, executed and delivered certain absolute and unconditional assignments of respective portions of the income, as should equal the following respective sums, from and out of the net income that might be derived during the calendar year 1931 from said testamentary residuary trust created by said will, and therein directed to be paid over to plaintiff for and during her natural life, as follows: $18,000.00 assigned absolutely to her son-in-law, Sumner S. Weil; $18,000.00 assigned absolutely to her daughter, Margaret S. Millhauser (formerly Margaret S. Marx); and $18,000.00 assigned absolutely to her son, Joseph H. Schaffner; a copy of each of said assignments is attached hereto, made a part hereof, and marked Exhibits "E", "F" and "G" respectively. That said respective portions of income of said testamentary residuary trust so assigned by the plaintiff on December 23, 1929 and derived during the calendar year 1930, were paid during such calendar year 1930 by the Trustees of said testamentary residuary trust to the respective assignees or their successors as follows: $15,000.00 to Halle S. Weil; $21,000.00 to the duly appointed and acting executors under the last will and testament of said Halle S. Weil; $30,000.00 to Margaret S. Marx; and $18,000.00 to Joseph H. Schaffner. That said respective portions of income of said testamentary residuary trust so assigned by the
7 plaintiff on November 14, 1930 and derived during the calendar year 1931, were paid during such calendar year 1931 by said Trustees of said testamentary residuary trust to the respective assignees as follows: $18,000.00 to Sumner S. Weil; $18,000.00 to Margaret S. Millhauser (formerly Margaret S. Marx); and $18,000.00 to Joseph H. Schaffner. That plaintiff properly did not include as part of her gross income, in her income tax returns for the calendar years 1930 and 1931, any of the income derived by said testamentary residuary trust during the calendar years 1930 and 1931, respectively, which was so assigned by her and paid directly to said assignees.

7. That on or about April 8, 1932, the Internal Revenue Agent in Charge at Chicago, Illinois, submitted to

said plaintiff, a report known as "Report of the Internal Revenue Agent in Charge At Chicago Illinois"; that in said report it was contended that the net income of said testamentary residuary trust, which on December 23, 1929 plaintiff had absolutely assigned to certain assignees as more fully set forth in paragraph 6 above, should be included in the taxable income of the plaintiff for the calendar year 1930; that on November 7, 1933, the then authorized and acting Commissioner of Internal Revenue, mailed, by registered mail, to the plaintiff a so-called notice of deficiency which approved the said report of said Internal Revenue Agent in Charge, and asserted a deficiency in income taxes of $16,821.29 for the said calendar year 1930; that said plaintiff did not, pursuant to the
8 provisions of said Revenue Act of 1928, file a petition with the United States Board of Tax Appeals appealing from such deficiency asserted in said notice of deficiency; that subsequent to the date of said notice of deficiency and prior to February 14, 1934, the then acting Commissioner of Internal Revenue assessed the said additional income tax of $16,821.29 against the plaintiff, and said additional income tax of $16,821.29 plus interest thereon of $2,909.39, or a total of $19,730.68, was paid by the plaintiff to the defendant, Carter H. Harrison, the said Collector of Internal Revenue, on February 14, 1934, pursuant to notice and demand made by said Collector of Internal Revenue.

8. That on or about October 18, 1933, the Internal Revenue Agent in Charge at Chicago, Illinois, submitted to said plaintiff, a report known as "Report of the Internal Revenue Agent in Charge at Chicago, Illinois"; that in said report it was contended that the net income of said testamentary residuary trust, which on November 14, 1930 plaintiff had absolutely assigned to certain assignees as more fully set forth in paragraph 6 above, should be included in the taxable income of the plaintiff for the calendar year 1931; that on March 6, 1934, the then authorized and acting Commissioner of Internal Revenue, mailed, by registered mail, to the plaintiff a so-called notice of deficiency which approved the said report of said Internal Revenue Agent in Charge, and asserted a deficiency in income taxes of $10,326.03 for the said calendar year 1931; that said plaintiff did not, pursuant to the provisions of said Revenue Act of 1928, file a petition
9 with the United States Board of Tax Appeals appealing from such deficiency asserted in said notice of

deficiency; that subsequent to the date of said notice of deficiency and prior to June 11, 1934, the then acting Commissioner of Internal Revenue assessed the said additional income tax of $10,326.03 against the plaintiff, and said additional income tax of $10,326.03 plus interest thereon of $1,359.36, or a total of $11,685.39, was paid by the plaintiff to the defendant, Carter H. Harrison, the said Collector of Internal Revenue, on June 11, 1934, pursuant to notice and demand made by said Collector of Internal Revenue.

9. That on January 18, 1936, the said plaintiff, in accordance with the Internal Revenue Laws of the United States, duly filed with the defendant, Carter H. Harrison, said Collector of Internal Revenue, claims for refund of $19,730.68, which represented the additional income tax deficiency and interest so paid by plaintiff to the defendant for the calendar year 1930, and $11,685.39, which represented the additional income tax deficiency and interest so paid by plaintiff to the defendant for the calendar year 1931, and for interest on said respective amounts from the date of their respective payments according to the provisions of law in this regard and the regulations of the Secretary of the Treasury established in pursuance thereof; that said claims for refund respectfully alleged that that portion of the net income of the said testamentary residuary trust derived during the calendar years 1930 and 1931 which the plaintiff had unconditionally and absolutely assigned to the respective assignees, as more fully set forth in paragraph 6 above, is not taxable income to said plaintiff during the calendar years 1930 and 1931, but is taxable to the said assignees who received said amounts of income during the calendar years 1930 and 1931. Copies of said claims for refund are hereto attached, made a part hereof, and marked Exhibits "H" and "I".

10. That said claims for refund of $19,730.68 and $11,685.39 for the calendar years 1930 and 1931 respectively, were rejected by the Commissioner of Internal Revenue on Schedule No. 22742 on May 20, 1936. That the plaintiff received notice of such rejection by registered mail. A copy of said notice of rejection is attached hereto, made a part hereof and marked Exhibit "J". Said notice of rejection was so mailed by said Commissioner of Internal Revenue on or after May 20, 1936.

11. Plaintiff alleges that no portion of the $84,000.00 of income of said testamentary residuary trust derived during the calendar year 1930 and unconditionally and ab-

solutely assigned by plaintiff on December 23, 1929, as more fully set forth in paragraph 6 above, and paid over to and received by the said assignees during the calendar year 1930, and that no portion of the $54,000.00 of income of said testamentary residuary trust derived during the calendar year 1931 and unconditionally and absolutely assigned by plaintiff on November 14, 1930, as more fully set forth in paragraph 6 above, and paid over to and received by the said assignees during the calendar year 1931, was or is taxable income of the plaintiff in the calendar years 1930 and 1931, respectively, or in any other year,

and that the amounts of said additional income taxes
11 plus interest, $19,730.68 and $11,685.39, were unlawfully and illegally assessed against plaintiff and collected from her as aforesaid.

12. Plaintiff is sole owner of the claims which are the subject matter of this suit and the only person interested therein, and no assignment or transfer of said claims or any part thereof, or any interest therein has been made.

13. That no part of said amounts of $19,730.68 and $11,685.39, totaling $31,416.07 has been returned, refunded or repaid to the plaintiff by the defendant, or by the Commissioner of Internal Revenue, or by the Internal Revenue Department of the United States, or by any Collector of Internal Revenue of the United States, or by anyone else, but, on the contrary, that said Commissioner of Internal Revenue has illegally assessed and said defendant, Carter H. Harrison, as such Collector of Internal Revenue of the United States, has illegally collected from plaintiff, the said amount of $31,416.07, and now retains the same, and plaintiff is justly entitled to the said amount herein claimed from the defendant, Carter H. Harrison, as such Collector of Internal Revenue, together with interest thereon from February 14, 1934 on the amount of $19,730.68, and from June 11, 1934 on the amount of $11,685.39.

Wherefore, the plaintiff prays the court for judgment against the defendant, said Carter H. Harrison, as such Collector of Internal Revenue, on the facts and law, in the amount of $31,416.07, together with interest on the sum of $19,730.68 at the legal rate of 6% per annum from February

14, 1934, and on the sum of $11,685.39 at the legal rate
12 of 6% per annum from June 11, 1934.

Mayer, Meyer, Austrian & Platt,
Attorneys for Plaintiff.

State of Illinois }
County of Cook } ss.

Sara H. Schaffner, being first duly sworn on oath, deposes and says that she is the plaintiff in the foregoing complaint; that she has read said complaint and knows the contents thereof and that the facts therein alleged are true and correct to the best of her knowledge and belief.

Sara H. Schaffner.

Subscribed and sworn to before me this 6th day of May, 1938.

William C. Runks,
Notary Public,
Cook County, Illinois.

(Seal)

My commission expires Jan. 26, 1942.

13 EXHIBIT "A."

(1) Last Will and Testament
of
Joseph Schaffner

I, Joseph Schaffner, a citizen of the United States of America, of the City of Chicago, County of Cook and State of Illinois, being of sound and disposing mind and memory and of the age of seventy (70) years, do hereby (expressly revoking all former wills by me made), make, publish and declare this my last will and testament, in manner following, to-wit:

First: I give and bequeath to my wife, Sara H. Schaffner, for her immediate personal use and requirements and as her own absolutely and forever, the sum of Fifty thousand dollars ($50,000.00); such sum to draw interest at the rate of five per cent. per annum from the time of my death until paid over to my wife.

Second: I give and bequeath to my son, Joseph H. Schaffner, all the books in my library published by the Bibliophile Society of Boston.

Third: I give and bequeath to my wife, Sara H. Schaffner, all my household goods and chattels, both useful and ornamental, including also all my books (other than those mentioned in the preceding Section "Second"), pictures, prints, ornaments, statuary, works of art, bric-a-brac, jew-

elry, plate, silverware, musical instruments and all other articles of domestic use or ornament, of whatever kind or character, and all my automobiles and all appointments, accessories and equipment thereunto belonging, and also all housekeeping stores, to have and to hold for her own use forever.

Fourth: I give and bequeath to the Michael Reese Hospital (an Illinois charitable corporation), for the use and benefit of its hospital, in Chicago, styled the "Michael Reese Hospital," the sum of Twenty thousand dollars ($20,000.00).

I expressly direct that the principal of said bequest shall be kept safely and securely invested and reinvested by the (2) proper officers, directors, or trustees of the said corporation, either separately, or as a part of its endowment fund, and only the income and interest derived therefrom from time to time shall be used and applied for the use and benefit of the said hospital.

Fifth: During the year 1913 I agreed to give the sum of Two thousand five hundred dollars ($2,500.00) annually for the period of five (5) years to the School of Commerce established in Chicago, Illinois, by the Northwestern University, as a department thereof, all as more fully set forth in a letter written and signed by me under date of June 25, 1913, addressed and transmitted to President A. W. Harris of Northwestern University. I have paid the five (5) installments which I agreed to give and I have since (as agreed by my letter of March 15, 1917, addressed to Mr. William A. Dyche at Evanston) promised to give the
14 sum of Two thousand five hundred dollars ($2,500.00) annually to the said School of Commerce for the further period of five (5) years beginning with the year 1918. In the event that at my death any of the five (5) installments of Two thousand five hundred dollars ($2,500.00) each should not have been paid, then I direct my executors to pay the same, either in installments each successive year (if more than one should remain unpaid at my death), or all unpaid installments in one sum and at one time, all as my executors in their own absolute discretion may deem best.

Sixth: I give and bequeath unto my niece, Margaret S. Eisendrath (the wife of William B. Eisendrath, of Chicago, Illinois, and the daughter of my deceased sister, Caroline Sternberg), the sum of Ten thousand dollars ($10,000) as her own absolutely.

I give and bequeath to my sisters-in-law, Ida Halle and

Julia Halle (of New York, New York), the sum of Ten thousand dollars ($10,000.00) each.

(3) Seventh: I give and bequeath the following annuities:

(a) Unto my beloved sister, Rachel Schaffner, of Chicago, an annuity of Two thousand dollars ($2,000.00), to be paid her for and during her natural life, in quarterly installments. However, should by sister at any time after my death not continue to live with my family, or some member thereof, as heretofore, then in order to enable her to live comfortably, said annuity shall be increased to Thirty-six hundred dollars ($3,600.00) and she shall be entitled to receive said increased annuity of Thirty-six hundred dollars ($3,600.00) during such time (but only so long) as she lives separately and apart from my wife or some one of my children;

(b) Unto Maude Schaffner, of Chicago, daughter of my uncle, Isaac Schaffner, an annuity of Six hundred dollars ($600.00) to be paid her for and during her natural life, in quarterly installments;

(c) Unto Nettie Schaffner, of Mount Vernon, New York, daughter of my uncle, Moses Schaffner (now deceased), an annuity of Six hundred dollars ($600.00), to be paid her for and during her natural life, in quarterly installments;

(d) Unto Henriette Schaffner, daughter of my deceased brother, Clarence Schaffner, of Mount Pleasant, Iowa, an annuity of Six hundred dollars ($600.00), to be paid her for and during her natural life, in quarterly installments;

(e) Unto Esther Schaffner, daughter of my deceased brother, Clarence Schaffner, of Mount Pleasant, Iowa, an annuity of Six hundred dollars ($600.00), to be paid her for and during her natural life, in quarterly installments;

(f) Unto Eva Kohn (daughter of my uncle, Solomon Schwab), of Cleveland, Ohio, an annuity of Three hundred dollars ($300.00), to be paid her for and during her natural life, in quarterly installments.

(4) The said annuities shall be paid to the respective annuitants in quarterly installments on the first day of January, April, July and October of each year, and the first installment of each of said annuities shall be paid on the first of said mentioned four days which next follows my death, and the succeeding installments quarterly thereafter.

During the administration of my estate in Probate

Court, all installments of the foregoing annuities falling due may be paid by the executors of my will out of my general personal estate, or the income thereof, but as soon as the trustees of my residuary estate (appointed and constituted by the following "Sixteenth" section of this my will), shall have on hand sufficient income to pay said installments as they respectively fall due, the same shall thereafter be paid by said trustees out of the income derived from time to time out of said residuary estate, given, devised and bequeathed by the said Sixteenth section, subject only to the provisions relative to the creation of a Reserve Annuity Fund in said Sixteenth section contained.

In no event shall the existence of any annuity under this will interfere with the settlement of my estate in Probate Court, or otherwise, or with the disposition or transfer of any property in any way at any time; nor shall any purchaser of any property at any time, whether at the time belonging to said residuary estate or otherwise held, be charged with notice of the existence of any annuity, or be required to concern himself in any way with the payment of the same, and his title shall be wholly unaffected by any annuity given by this will, or any provision of this will in relation thereto.

Nothing herein contained shall be taken to authorize any annuitant to anticipate any installment of her annuity herein given to her, or to commute the value of the same; nor shall any annuitant do, or suffer any act or thing whereby the said annuity, or any part (5) thereof, shall be assigned, transferred, charged or encumbered, but every installment of each annuity as it falls due shall be paid directly into the hands of the annuitant, or in the event of any attempt on the part of any third person to seize or reach the annuity payable to any annuitant, or any part thereof, then the trustees of said residuary estate may, in their discretion, apply the same directly for the support and maintenance of the annuitant.

Eighth: During the year 1908, I secured through the Massachusetts Mutual Life Insurance Company, of Springfield, Massachusetts, a policy bearing date January 28, 1908, and numbered 237,988, in the sum of Twelve thousand five hundred dollars ($12,500.00), payable to my daughter, Halle J. Schaffner (now Halle S. Schlesinger), in twenty annual installments of Six hundred and twenty-five dollars ($625.00) each, beginning at my death, with the provision that each installment from the second to the

twentieth, both inclusive, shall be increased by such share of the surplus as may be allotted by the directors of said Company, and with the further provision that if my said daughter lives to receive the twenty annual installments, the payment to her of annual installments of the same amount will be continued during the remainder of the life of my said daughter and with the proviso that in the event of the death of my said daughter after my death and before all the first twenty annual installments have been paid, the remainder thereof will be paid as in said policy more particularly specified;

Now therefore, in order to do equal justice to my daughter, Margaret S. Marx, I do provide, ordain and direct that there shall be paid to her annually for and during her natural life, by the trustees of the residuary estate given, devised and bequeathed by the following "Sixteenth" section of this my will, out of the income thereof,

an amount equal to the sum that my daughter, Halle
16 S. Schlesinger, may at such time receive under the
said policy; provided, (6) (a) that in the event of the death of my daughter, Halle, prior to the death of my daughter, Margaret, then my daughter Margaret shall after the death of Halle continue to receive annually the sum of Six hundred and twenty-five dollars ($625.00) for and during her natural life; (b) that in the event of the death of my daughter Margaret before she shall have received twenty annual payments, leaving issue of the said Margaret her surviving (but not otherwise), the said annual payments shall be applied by said trustees, so long as there shall be issued of the said Margaret living (but not thereafter) for the support, maintenance and education of such issue living from time to time (per stirpes), until twenty annual payments shall have been made in all to said Margaret and her issue; and (c) provided further that nothing in this Section Eighth contained shall be construed as authorizing any payments under the provisions hereof, (1) after the death of Margaret, in the event of her death not leaving issue her surviving, (2) after the death of Margaret, in the event that at least twenty annual payments shall have been made to her, (3) after the death of Margaret and all her issue, or (4) after the death of Margaret and after twenty annual payments in all shall have been made to her and her issue.

Ninth: I give and bequeath to Edith Orr, formerly of Chicago and now residing in Florida, a former nurse of

my son, Joseph H. Schaffner, the sum of One thousand dollars ($1,000.00).

Tenth: I give and bequeath to each grandchild of mine living at the time of my death, as a remembrance from his or her grandfather (but expressly subject to the trust and limitations hereinafter contained) the sum of Ten thousand dollars ($10,000.00). The legacy to such grandchild shall, however, be paid over in trust to the parents, or surviving parent, of such grandchild upon the written receipt of such parents or surviving parent, such parents, and the survivor of them, or surviving parent (as the case may be) to hold such gift in trust, and to manage and control the (7) same, and loan and re-loan, or invest and reinvest the same, in such manner as such parents or parent (as the case may be) may choose and to such bank or banks, or in such mode or security, real or personal, as such parents or the survivor of them, may select and deem proper, and without any restriction in this regard, and to pay over such bequest, together with the accumulations, either in cash or in such form as the fund may then be invested, to such grandchild, upon such grandchild attaining the age of twenty-five (25) years, with power, however, in such parents or the survivor of them, or surviving parent (as the case may be), in their or his absolute discretion, to advance to any grandchild after such grandchild has become of age and before such grandchild has attained the age of twenty-five (25) years, the whole or any part of the fund so held in trust, if such parents are, or the survivor of them is, of the opinion that such grandchild is capable of conserving or judiciously using such sum of money.

Until such grandchild attains the age of twenty-one (21) years the income derived from the fund held in trust for its benefit shall be accumulated, and such accumulations shall be added to, and deemed accretions to the principal or corpus of the fund, for the benefit of the person or
17 persons who shall ultimately become entitled to the fund under the provisions hereof, and shall in all respects be treated and dealt with as though originally a part of the bequest, and from and after the time that such grandchild attains the age of twenty-one (21) years and until such grandchild attains the age of twenty-five (25) years, the income thereafter arising on the fund then held in trust for the benefit of such grandchild shall be paid over to such grandchild in reasonable installments during the course of each year.

And in the event of the death of any grandchild within

twenty-one (21) years after my death and before such grandchild has attained the age of twenty-five (25) years, and without leaving (8) issue or a spouse surviving such grandchild, then so much of the bequest (including accumulations and any then accumulated income thereon) as may not have been theretofore transferred to such grandchild pursuant to the power hereinbefore granted shall be distributed among the surviving brothers and sisters of such grandchild and the issue, if any, of any then deceased brother or sister, per stirpes (such issue to take only by representation); but in case such grandchild so dying within said period does not leave him or her surviving any issue or spouse, or any brother or sister, or issue of any then deceased brother or sister, then so much of said bequest (including any accumulations and any then accumulated income thereon) as may not have been theretofore transferred to such grandchild pursuant to the power aforesaid, shall be distributed among such grandchild's then living next of kin, determined as of that time, under the statutes then in force in the State of Illinois relating to the descent and distribution upon death of personal property, such next of kin (if more than one) to take in the proportions prescribed by the said statutes as in such case.

Eleventh: I give and bequeath to each child of mine the sum of Thirty thousand dollars ($30,000.00) as such child's own, absolutely and forever.

Twelfth: I give and bequeath the sum of Thirty thousand dollars ($30,000.00) in such assets and securities as may, in their discretion, be selected by my executors, unto my wife, Sara Schaffner, my friend, Max Hart, my son, Joseph H. Schaffner (all of Chicago, Illinois), and my brother-in-law, Hiram J. Halle (of New York, New York), and to the survivors or survivor of them, and their and his successors, as trustees, upon the trusts and for the uses and purposes hereinafter limited and defined, and subject to the powers, provisos and provisions hereinafter contained and expressed. The principal note of Levi Mosiman, executed at Mount Pleasant, Iowa, and dated February 26, 1918, for the sum of Twenty thousand two (9) hundred fifty dollars ($20,250.00), due on the first day of March, 1923, and payable to my order at the banking office of The Merchants Loan and Trust Company, in Chicago, Illinois, and bearing interest from March 1, 1918 until maturity at the rate of five per cent. (5%) per annum, payable semi-annually on the first day of September and March of each

year, and after maturity at the rate of eight per cent. (8%) per annum (together with the accompanying interest notes or coupons), to the extent of the principal amount at my death unpaid upon said principal note, and which said principal note is secured by a mortgage dated February 26, 1918, executed by Levi Mosiman to Joseph Schaffner, conveying certain real estate situate in Henry County, Iowa, and filed for record in the Recorder's Office of said County on February 27, 1918, and therein recorded in Book 136 of Mortgages at page 247, shall together with said mortgage constitute part of said fund of Thirty thousand dollars ($30,000.00), and shall be selected therefor by my executors. I do hereby expressly declare that said fund shall draw interest from the time of my death.

Said trustees shall receive and take, have and hold, manage and control, all the said fund and property given and bequeathed to them as aforesaid, with full power to convert and reconvert the same, and any part or parts thereof, at any time or times, and from time to time, as may appear convenient or expedient to them and after discharging and paying out of the income that may be derived from said trust property all proper expenses and charges, they shall pay over the entire net income derived therefrom, in reasonable installments to my sister-in-law, Mary Schaffner (the wife of my deceased brother, Clarence Schaffner), for and during her natural life, and from and after the death of the said Mary Schaffner at any time (whether before or after my death), the trustees shall, until the period of distribution hereinafter next fixed, pay over and distribute the entire net income from time to (10) time derived from the said trust estate, on the first day of January and of July of each year, to and among such of the children of the said Clarence Schaffner, deceased, as may at the respective times so appointed for the distribution of said income be living, and the descendants, if any, then living, of any child of the said Clarence Schaffner who may have died prior to such time, per stirpes and not per capita (such descendants to take only by representation, and not otherwise).

In (1) the event of the death of the said Mary Schaffner, leaving any child of the said Clarence Schaffner her surviving under the age of twenty-one years, then when the youngest child of the said Clarence Schaffner living at the death of the said Mary Schaffner shall attain the age of twenty-one years, or would have attained the age of

twenty-one years in the event of such child's death after the death of Mary Schaffner but prior to attaining the age of twenty-one years, or (2) in the event of the death of the said Mary Schaffner, leaving no child of the said Clarence Schaffner her surviving, or leaving no child of the said Clarence Schaffner her surviving under the age of twenty-one years, then at the death of the said Mary Schaffner (which time—whichever of said events shall happen—I designate and fix as the "period of distribution"), the trustees shall transfer and convey the entire property and estate then in their possession or control, or the net proceeds thereof, to the children then living of the said Clarence Schaffner, and to the descendants, if any, then living of any child of the said Clarence Schaffner who may have died prior to such time, per stirpes and not per capita (all descendants to take by representation, and not otherwise); and in the event that no descendants of the said Clarence Schaffner should be living upon the arrival of the said period of distribution, then the trustees shall transfer and convey the entire property and estate then in their possession or control, or the net proceeds thereof, to my then living children and the (11) descendants, then living, of any child of mine who may have died prior to such time, per stirpes and not per capita (such descendants to take only by representation).

19 Anything hereinbefore contained to the contrary notwithstanding, I expressly empower the trustees, and the survivors and survivor of them, and their or his successors, in their sole and absolute judgment and discretion, to terminate the said trust at any time prior to the arrival of the period of distribution (and either before or after the death of said Mary Schaffner) and in such case to transfer and convey absolutely the entire property, fund and estate then vested in them, freed and disencumbered of all trusts and limitations, to the children then living of the said Clarence Schaffner and the descendants, if any, then living, of any then deceased child of the said Clarence Schaffner, per stirpes and not per capita (such descendants to take only by representation), to have and to hold to themselves, their heirs and assigns, forever.

No obligation, however, shall rest upon said trustees to terminate the said trust, or to make said transfer, and I prefer that they shall do so only if upon careful reflection and full consideration of all the circumstances, they regard it for the best and ultimate interests of the family of the said Clarence Schaffner that the same be done and if, more-

over, they are of the opinion that the children of the said Clarence Schaffner are capable of properly managing and making appropriate use of the property to be transferred to them.

At the present time there are four (4) children of the said Clarence Schaffner living, two sons and two daughters.

The trust by this section of my will created may for convenience be known and referred to as the "Clarence Schaffner Family Trust."

Thirteenth: None of the legacies, bequests or annuities given by the preceding sections of this my will, shall be or consti(12)tute, or shall be deemed to be or constitute, a lien or charge upon any real estate of which I may die seized or possessed, or to which I may be entitled at my death, and no purchaser thereof need inquire about, or concern himself with, the payment of the same.

Fourteenth: I give and devise unto my wife, Sara H. Schaffner, my house and the grounds and appurtenances belonging to the same, described as The South fifty (50) feet of Lot three (3) in Block thirteen (13), and Lots one (1) and two (2) except the South seventy-four feet of said Lot two), in Bogue's Re-subdivision of Lots six (6), seven (7) and ten (10) in said Block thirteen (13), all in Lyman, Larned and Woodbridge's Subdivision of the East-half of the North-west quarter with the North-west quarter of the North-east quarter of Section eleven (11), Township thirty-eight (38) North, Range fourteen (14), East of the Third Principal Meridian, in Chicago, Illinois, also known as No. 4819 Greenwood Avenue, to have and to hold to herself, her heirs and assigns, forever.

Fifteenth: I do hereby expressly ordain that each and all of the annuities, legacies, bequests and devises in the preceding sections of this my will given, shall be given without any abatement, deduction or diminution on account, or because, of any inheritance, estate, transfer, or succession taxes, whether state or national, or any tax or duty levied or assessed upon estates, gifts, devises, legacies or rights or privileges of succession, but the executors of my will shall pay all such taxes or duties that may be imposed upon, or assessed against, any of the foregoing devises, legacies or annuities, or devisees, legatees or annuitants, or rights or privileges of succession, in respect of said devises, legacies or annuities, out of my general personal estate (and either out of the principal or the income thereof, as said executors may, in their discretion, deem appropriate), and may deduct the same from my

residuary estate, or charge the same to expenses of administration.

(13) Sixteenth: All the rest, residue and remainder of all the property and estate, real, personal and mixed, of which I may die seized or possessed, or which I may own, or to which I may be entitled, at the time of my death, of whatever kind or nature, and wheresoever situate or found, and whether in the State of Illinois or elsewhere (including also all lapsed devises, as well as all lapsed legacies), I give, devise and bequeath unto my wife, Sara H. Schaffner, my friend, Max Hart, my son, Joseph H. Schaffner (all of Chicago, Illinois) and my brother-in-law, Hiram J. Halle (of New York, New York), and to the survivors and survivor of them, and their and his successors, as trustees, upon the trusts and for the uses and purposes hereinafter limited and defined and subject to the powers, provisos and provisions hereinafter contained and expressed:

Said trustees shall receive and take, have and hold, manage and control all the property and estate, both real and personal, given, devised and bequeathed to them as aforesaid, with full power to convert and reconvert the same and any part or parts thereof, at any time or times, and from time to time, as may appear convenient or expedient to them, and shall invest and reinvest the moneys and funds on hand from time to time, in their own judgment and discretion, and after discharging and paying out of the income from time to time derived from said trust estate all proper expenses and charges (including, as they respectively fall due, the several installments of the annuities hereinbefore in this my will given), the trustees shall, during the life of my wife, Sara H. Schaffner, pay over the entire net income derived from said trust estate to my said wife, for her own absolute use and behoof, in reasonable installments from time to time (and unless inconvenient, during the months of January and July of each year) for and during her natural life.

(14) And from and after the death of my wife (whether before or after my death), and until the period of final distribution hereinafter fixed, said trustees shall pay over and distribute the entire net income from time to time derived from the trust estate then in their possession or control, in semi-annual installments, on the first day of January and the first day of July of each year, to and among such of my children as may at the respective times so appointed for the distribution of said income be living and the descendants, if any, then living of any child of mine who may

have died prior to such time, per stirpes and not per capita (such descendants to take only by representation, and not otherwise); provided that the share of the income distributable at any time to any beneficiary at the time under age may be applied by the trustees directly for the benefit, maintenance, support and education of such beneficiary under age.

In providing my daughter, Halle S. Schlesinger, with a home and furnishing the same, I expended the sum of
21 about Fifty thousand dollars ($50,000.00). I therefore direct that the sum of Fifty thousand dollars ($50,000.00) shall be charged against the amount that may be distributable to my daughter Halle, or to her descendants, at the period of first distribution hereinafter designated and fixed and shall be taken into account by said trustees in making the distribution hereinafter directed to be made by said trustees at said period as an advance to Halle, or to her descendants, in case of Halle's death prior to said period of first distribution; but no interest shall be charged upon said amount, nor shall the same be taken into account in any distribution of income that may be made prior to said period of first distribution, nor shall my daugher Halle (or her descendants) otherwise be charged with the same. And in order to make a similar provision for my daughter Margaret S. Marx, I expressly direct said trustees within one year after my death (whether during or after the lifetime of my (15) wife), to advance to said Margaret out of the principal or corpus of the trust estate the sum of Fifty thousand dollars ($50,000.00); I also expressly empower said trustees to advance the sum of Fifty thousand dollars ($50,000.00) to my son, Joseph H. Schaffner, at any time prior to the said period of first distribution and after Joseph shall have attained the age of twenty-five (25) years (whether during or after the lifetime of my wife). No such advancement shall, however, be made by said trustees to my son, Joseph, under the powers herein conferred upon them without the written consent thereto of my wife, if then living and capable of consenting. Any advancement made hereunder to either Margaret or Joseph shall be charged against the share or portion of the trust estate that may be payable to such child, or to the descendants of such child, at said period of first distribution and shall be taken into account by the trustees in making the distribution hereinafter directed to be made by said trustees at said period, but no interest shall be charged upon any such advance, nor shall the same be taken into

account in any distribution of income that may be made hereunder prior to the arrival of said period of first distribution. In the event that I shall after the making of this will advance to my daughter, Margaret, the sum of Fifty thousand dollars ($50,000.00), or any part thereof, or set aside for her any fund or investments, the amount or amounts so expressly advanced to Margaret, or expressly set aside for her, shall adeem, pro tanto, the amount directed to be advanced to her, as aforesaid, by the trustees, and shall be deducted therefrom, and shall be taken into account at said period of first distribution in the same manner as though advanced hereunder.

In (1) the event of the death of my wife, Sara H. Schaffner, after the thirty-first day of December, 1926, then upon her death, or (2) in the event of the death of the said Sara H. Schaffner prior to the year 1927, but leaving a child or children of mine her surviving and living on the first day of January, 1927, then upon the first (16) day of January, 1927, or (3) in the event of the death of my wife and all my children prior to the year 1927, then upon the death of the last survivor of my wife and my children (which time—whichever of said three events shall happen—I designate and fix as the "period of first distribution"), the said trustees shall divide all the property and estate then in their possession and control into two parts; one part to be equal (in the absolute judgment and estimation of said trustees—
they to make their own selection of property and as-
22 sets, but not to include therein any shares of corporate
stock, if there be sufficient other assets on hand), to the sum of One hundred and fifty thousand dollars ($150,000.00), multiplied by the number of such of my children as may then be living and the descendant or descendants then living of any of my children that may then be deceased, counting, however, all the descendants of each then deceased child only as one, and such part of such trust estate so measured and valued, said trustees shall retain until the period of final distribution hereinafter fixed, and the other part, or the proceeds thereof, that is to say, all of the said trust estate, excepting the part so to be retained as aforesaid, said trustees shall divide and distribute among my then living children and the descendants, if any, then living of any child of mine who may have died prior to such period of first distribution, per stirpes and not per capita (such descendants to take only by representation, and not otherwise); provided, however, (1) that out of the part of the trust estate to be divided and distributed, as

aforesaid, there shall first be paid by the trustees to my son, Joseph H. Schaffner, if living at the arrival of said period of first distribution (but not otherwise), the sum of Fifteen thousand dollars ($15,000.00), which payment is directed by me to be made to him in order to make to him some compensation for the maintenance by me for the benefit of my two daughters of two policies of insurance on my life, issued to me in the year 1903, by the Mutual Benefit Life Insurance Company of (17) Newark, New Jersey, one of which is payable to my daughter, Halle J. Schaffner (now Halle S. Schlesinger), and the other to my daughter, Margaret Schaffner (now Margaret S. Marx); and (2) that out of the part of the trust estate so to be divided and distributed, as aforesaid, said trustees shall reserve and set apart a fund (hereinafter called "Reserve Annuity Fund"), sufficient in their own judgment and discretion to produce the requisite net income to pay from time to time any annuities thereafter to fall due, pursuant to the provisions of the Seventh and Eighth sections of this my will, and thereafter all installments of said annuities so to fall due shall be paid solely and exclusively out of the said Reserve Annuity Fund, or the net income derived therefrom, and said Reserve Annuity Fund shall continue to be managed and controlled and invested and reinvested by said trustees under all the powers by this will conferred upon them as trustees; and upon the death of the last survivor of all the annuitants mentioned in said Seventh and Eighth sections of this my will, and the satisfaction of the annuities and payments therein provided for, the said Reserve Annuity Fund, together with any accumulated income thereon, shall be transferred and paid over to the persons entitled to receive the trust estate to be divided and distributed as aforesaid at said period of first distribution, that is to say, among my children living at said period of first distribution, and the descendants, if any, then living of any child of mine who may have died prior to such period of first distribution, per stirpes and not per capita, and the legal representatives and assigns of such persons; and partial distributions from the corpus of the Reserve Annuity Fund may be made, from time to time, to said persons, their legal representatives or assigns, if not further required, in the judgment and discretion of said trustees, to produce the requisite income to pay annuities thereafter payable or accruing; and provided further, (3) that in making said division (18) and distribution at said period of first distribution, said trustees shall take into account

the Fifty thousand dollars ($50,000.00) to be charged
23 against my daughter Halle, as aforesaid, or her descendants in the event of her prior death, as aforesaid, and any advancement that may have been made hereunder to any other child of mine pursuant to the powers or directions aforesaid, and shall charge every such sum (but without interest) against the share distributable to such child or the descendants of such child at said period of first distribution.

The part of said trust estate to be retained by said trustees as hereinbefore directed (and not to be distributed by them, as aforesaid, at the said period of first distribution), the said trustees shall continue to hold, manage and control under all the powers in this my will vested in them, until the period of final distribution hereinafter designated and fixed and shall meanwhile continue to distribute the net income derived therefrom as hereinbefore ordained and as they are hereinbefore directed with respect to the distribution of the net income derived from the entire trust estate, from and after the death of my wife until said period of final distribution.

The death of the last survivor of my wife and all my children is designated by me and fixed as the "period of final distribution" and upon the death of the last survivor of my said wife and children, the trustees shall transfer and divide and distribute all the property and estate then in their possession or control, or the net proceeds thereof (not intending to include, however, said Reserve Annuity Fund, disposed of as hereinbefore provided), among my then living descendants, per stirpes and not per capita (the descendants then living of each deceased child of mine together to take one share and only by representation), and should no descendant of mine be living at said period of final distribution, then the (19) said trustees shall transfer and convey all the said property and estate then still vested in them, or in their possession or control as trustees of and under said trust, or the net proceeds thereof, to the Northwestern University (at Evanston, Illinois), the amount to be kept safely and securely invested and reinvested by the Trustees of Northwestern University, and the net income and interest derived therefrom from time to time to be used and applied for the benefit of its School of Commerce, or any like department of the University organized and established for similar purposes.

Upon the arrival of each period of distribution hereinbefore fixed, the trustees of the trust by this section of my

will created shall distribute, transfer and convey the property and estate directed to be distributed or transferred at such time as aforesaid (or the net proceeds thereof, or of any of the same) to the respective persons entitled thereto, or divide and distribute the same between them; and shall possess full power to convert, exchange, partition or otherwise dispose of any property or estate in their hands, or under their control, if, in their judgment, they deem it desirable or expedient for the purpose of effectuating or facilitating such division or distribution; and in any division or partition they shall not be required to assign or allot to each beneficary his or her interest in severalty, or in each separate parcel or item of property, but may assign and transfer one parcel or item of property to one or more, and another to another or others, and so on, making such a distribution of the property and assets at the respective times in their hands or under their control, as may appear to them, in their own judgment and discretion, most convenient and practical; provided, however, always that
24 if at the time any distribution is directed to be made as aforesaid of the principal or corpus of any of the trust property, any grandchild of mine should be under the age of twenty-one years, the trustees may, notwithstanding the provisions aforesaid, retain and continue to manage and (20) control the share or portion to which any such grandchild of mine under the age of twenty-one (21) years (the child of any then deceased child of mine) may be entitled at either of said periods of distribution, for the benefit of such grandchild of mine, under all the powers (discretionary, as well as other), rights and privileges by this will vested in or conferred upon the trustees, until such grandchild attains the age of twenty-one (21) years, and the trustees shall, until such time, apply or pay over the net income derived from such grandchild's share or portion for his or her maintenance, support and education, and when such grandchild attains the age of twenty-one (21) years, the trustees shall transfer and pay over to such grandchild his or her share or portion, freed and disencumbered of any trust; but the proviso aforesaid is not intended, and shall not be construed, to postpone the vesting of the share or portion in such grandchild beyond the arrival of the respective period of distribution fixed as aforesaid, as hereinbefore prescribed and determined.

The term "child" or "children", as employed by me in this will, shall not be held to embrace or refer to a grandchild or grandchildren or more remote issue; and the term

"grandchild" or "grandchildren" shall not be held to embrace or refer to a great grandchild or great grandchildren, or more remote issue.

Seventeenth: The respective trustees of the several trusts created under the previous sections of this will, shall have complete title to, and full charge and control of, the property given to, or from time to time vested in, them thereunder, and may proceed in the execution and performance of their respective duties and trusts without the direction, interference of, or authority from, any court; nor shall it be necessary for any of said trustees to take steps or proceedings in any court in order to qualify, or be invested with title, or authorized to act under this will, and (21) they are hereby expressly relieved from any such duty, that might but for this exemption, be imposed upon them by any statute.

The respective trustees of the several trusts created under previous sections of this will and under the various provisions thereof, shall have and possess, and may exercise at all times, not only all the powers, rights, privileges and authorities incident to their respective offices, or required in, or convenient for the discharge of their respective trusts, or impliedly conferred upon or vested in them, respectively, but I do expressly confer upon and vest in the respective trustees of the said several trusts, the powers, rights, privileges and authorities embodied or mentioned in the following clauses, or paragraphs of this section Seventeenth, the provisions of all of which (unless clearly inapplicable or expressly limited) shall be deemed applicable and apply to all the respective trustees under said several trusts, though the expression or term "trustees" or "respective trustees" is alone used.

In leasing any real estate at any time or times, the trustees are authorized and empowered to let or demise the same for any term or terms of years (and without reference to the duration of life of the respective beneficiaries, or any of the same, and without reference to the actual duration of the respective trusts in point of time, and without any restriction whatever as to the length of any term, whether for one year or ninety-nine years, or one hundred and ninety-eight years, or any longer or shorter term) and upon such conditions and under such covenants and provisions as may seem proper to them, and the trustees may sell or otherwise dispose of, or ultimately transfer, such real estate subject to any such lease or leases.

The trustees shall have full power at all times, and from time to time (but in no sense and under no circumstances shall it be obligatory upon them) to sell, convert, reconvert, partition, exchange, or convey, the whole of any property of which they may (22) stand seized or possessed from time to time, or to which they may be entitled, or any part or parts thereof, or their claim or interest therein, and to make, execute and deliver all deeds or other instruments that they may deem necessary or expedient for such purpose, and to make such contracts with reference to their said estate, or any part thereof, as they may see fit; and they may sell or otherwise dispose of the same, or any part or parts thereof at any time or times, and from time to time, at either public or private sale, for cash or upon credit, or partly for cash and partly upon credit, and upon such other terms and conditions as may appear meet to them, and may receive and receipt for the purchase money, or other proceeds thereof; and may, in respect to the properties held by them at any time, establish, grant or reserve such easements, servitudes or charges, as they may judge beneficial or appropriate, and may also enter into such covenants, conditions, contracts and agreements, as to, providing for, or relating to, title, party-walls, construction, building lines, building restrictions, or otherwise, as they, in their sole judgment, may regard proper, and such covenants, conditions, contracts and agreements shall be binding and conclusive upon all of the beneficiaries at any time of the respective trusts and those to claim under them, or in any wise under the provisions of this will.

No purchaser of any trust property or other person need in any event or under any circumstances look to, or inquire about, or concern himself with, the application of the purchase money, avails, or other proceeds of any sale or other disposition.

All deeds or other instruments of conveyance executed by the trustees shall be firm and effectual in investing the grantee or grantees therein with the full title sought to be sold, conveyed or transferred or set-off or allotted to him or them.

The trustees may join any co-tenant of any property which they may at any time receive or hold in common with another (23) or others, in any partition of the same, or in making any division that may appear suitable to the respective trustees, of all or any of the property so held in common; and may allot or assign to any person or persons having or claiming to have any interest in any prop-

erty, any portion thereof, or in any other mode or manner whatsoever, satisfy such interest or claim. And in case any trustee should in his or her own right, or in some other trust or representative capacity, be interested in any such property or partition or division, or be the owner of any part of such property so held in common, or have any claim therein, then the conveyance to him or her by his or her co-trustee or co-trustees, of the part or parcel of
26 real estate sought to be set apart or allotted to him or her, shall be firm and effectual in investing him or her with the title thereto; or any allotment or partition as between such trustee interested in his or her own right, or in some other trust or representative capacity and any other trustee or trustees, may be evidenced and effected by the written declaration of the trustees, signed, sealed and acknowledged in the same manner as deeds to real estate.

The trustees, as well as my executors, are expressly authorized, in their own absolute discretion, to permit, and shall incur no responsibility or liability by permitting, any estate which shall at my decease, or at any time thereafter, be invested in or upon any shares of stock, bonds, funds, securities or other investments whatsoever, real or personal, permanent or determinable, to remain wholly or in part so invested, and for such period or periods as the respective trustees or executors (as the case may be) shall think fit, or by permitting any estate or property as shall not be so constituted or invested to remain unconverted or uninvested.

The trustees, as well as my executors, shall at all times have full power to take and hold any shares of stock to which they respectively may be or become entitled, or belonging, or which may at any time belong, to any trust or estate under their control (as (24) the case may be), either in their, or any of their, own names, as trustees or executors, or individually, or otherwise, or in the name or names of any person or persons or corporation they may, from time to time, in the particular instance or instances select or designate, all as the trustees or the executors (as the case may be) may from time to time, in their own judgment, find most convenient.

With respect to all shares of stock held by them, respectively, at any time, the trustees or executors (as the case may be) shall in their uncontrolled discretion possess, and be entitled to exercise, the right to vote thereon, in person or by their proxy or proxies, for every purpose, to assert

or waive any stockholder's right or privilege in respect thereof, including any right or privilege to subscribe for or otherwise acquire any increased stock, to assent to any merger or consolidation, and to consent to any corporate act, all in the same manner and to the same unrestricted extent as the absolute owners of any such shares.

In investing the moneys or funds belonging to the corpus of the trust estate, that they may have on hand, from time to time, and at any time or times, the trustees shall not be restricted to the class of securities to which trustees are usually limited, or confined in any wise to the State of Illinois, but they shall be at liberty to use their own broad discretion in making loans or investments, or in depositing moneys, and are especially authorized (without, however, being thus in any wise limited or restricted) to acquire, purchase, invest in, or loan upon, railway bonds, bonds of quasi-public or public service corporations, secured corporate bonds, municipal or county judgments, warrants or certificates, or special assessment bonds of the City of Chicago, Illinois (if such special assessment bonds afford the security of those now issued) and loans secured by good and marketable collateral. In the making of investments it is my preference that the trustees always look to (25) the security and safety of the investment rather than to the rate of interest that may be realized.

27 The trustee shall have full power to vary and transpose investments from time to time, at their discretion.

In the event of the purchase or acquisition by the trustees at any time or times of any investment or investments at a premium or above par, they are authorized, in their discretion, notwithstanding the payment of such premium, to appropriate and use the entire net income derived from any such investment for the benefit of the beneficiary or respective beneficiaries (as the case may be) for the time being, without any reservation or deduction for the purpose of creating or maintaining a sinking fund, and without reference to the fact that the principal or corpus of the trust estate might thereby become impaired.

If they deem it judicious, the trustees may at any time or times apply any funds or property in their hands from time to time to the building or rebuilding upon, or improvement or remodeling of, any real estate.

The trustees may also, in their discretion, invest in, purchase, or otherwise acquire real estate, or any chattel

or chattels real; and shall at all times possess full power to convert personalty into realty.

I do further provide that the trustees may incur and make whatever expenses and outlays they may deem necessary, prudent or expedient for the proper administration of their respective trusts, may pay taxes, assessments, insurance premiums, commissions and counsel fees, may make repairs and improvements, and may pay out from time to time whatever sums they may regard prudent or expedient for the care, management, protection, conservation or amelioration of the estates under their respective control as trustees.

In no accounting which they may render shall the trustees be obliged to furnish any voucher for any expenditure made by them, (26) but their simple statement thereof, in accounting, shall be sufficient evidence of the correctness and propriety thereof.

The trustees, and also my executors, are expressly authorized to charge or apportion any expenses, outlays or disbursements made or incurred by them, respectively, at any time, and also any losses that may be sustained, to or between the capital and income of the estate or fund at any time held or controlled by them, respectively, as well as to or between the capital and income of any share or portion of any estate or fund, all as they, in their own judgment and discretion, may deem just and proper.

The respective trustees are expressly authorized, in connection with their respective trusts, to determine whether any moneys shall, for the purposes of their respective trusts, be considered as capital or income, and how valuations are to be made, or values determined, for the purpose of any case of allotment, or appropriation, or otherwise, and generally to settle and determine all questions and matters of doubt or dispute, and all questions arising in the course of, or incidentally to, the execution of the respective trusts of this my will, or the powers thereof; and every such settlement or determination, on the part of the trustees, or any act or conduct on their part implying such setltement or determination, although the question involved may not have been actually raised, shall be conclusive and binding upon all persons in interest.

28 In making distribution of their respective trust estates or in transferring the same, or any part thereof, at any time, it shall not be necessary for the trustees to convert any investments, securities or property which

they may have on hand into cash, but they may pay over and transfer to any beneficiary his or her share of the estate, or any portion thereof, in such investments, securities or property as may then be on hand, and fix and determine the values thereof; and in like manner the trustees may divide and partition any real estate between any of the beneficiaries, and may (27) allot and assign and convey one piece or tract of real estate, or any part thereof, to one or more beneficiaries and another to another and fix and determine the valuation at which the parts or parcels of real estate so set-off or assigned shall be taken.

In paying over and transferring to any beneficiary his or her share, or any part thereof, or any property at any time, the trustees shall be entitled to demand releases, discharges and acquittances.

The trustees of the respective trusts, as well as my executors, may select and employ in and about the execution of their respective trusts, attorneys, accountants and agents, whose reasonable compensation shall be deemed part of the expenses of the respective trusts; and the trustees of the respective trusts, as well as my executors, are also authorized, as occasion may from time to time arise, to delegate in writing any of their powers, to an attorney or attorneys in fact, and also to appoint and constitute one or more of the trustees or executors (as the case may be) as attorney or attorneys for all of them, and to act through such attorney or attorneys; reserving, however, at all times, the right of revoking such authority.

Eighteenth: Any estate, powers (discretionary, as well as other), rights or privileges, conferred upon, granted to, or vested in, my executors under this my will, or granted to, or conferred upon, or vested in any trustees under any trust created by or under any section of this will, shall survive, pass and extend to the survivors and survivor of them, or such of them as shall continue to act from time to time; and all powers (discretionary, as well as other), rights and privileges shall, irrespective of the wording of this will, be deemed vested in and shall devolve upon, and may be exercised or executed from time to time by, the executors or executor, or trustees or trustee (as the case may be) for the time being, whether original, successor, or substituted

(28). The expressions "my executors", or "said executors", or "executors", wherever used in this will, shall mean and be construed as comprising and referring to the

executors of my will for the time being, whether original, substituted or otherwise; and likewise the expressions "my trustees", or "said trustees", or "trustees", wherever used in this will, shall mean and be construed as comprising and referring to the trustees for the time being of any trust or trusts, whether original, successor, substituted or otherwise.

Nineteenth: I expressly empower my executors, and the survivor of them, as well as the respective trustees of any trust under any section of this will, and the survivors and survivor of them, by instrument in writing, signed, sealed and acknowledged in the same manner as deeds to real estate, at any time or times, to appoint and constitute
29 a co-executor or co-executors, or a co-trustee or co-trustees (as the case may be), to act with them, or him, or to appoint and constitute any successor or successors to any of them at any time as executor or executors, or as trustee or trustees, to act in case of the death at any time, resignation, refusal, disqualification, incapacity, or other inability to act, of any of them, at any time; and any appointment so made may be revoked by the executor or executors, or trustee or trustees (as the case may be) making the same, at any time before the appointee or appointees has or have entered upon or undertaken the trust.

In such appointment as hereinbefore authorized there may be conferred upon and vested in such co-executor or co-executors, or co-trustee or co-trustees, or successor or successors in trust, all or any of the powers discretionary, as well as other), rights and privileges in this my last will conferred upon or vested in the original executors or trustees, including also the power of appointing a co-executor or co-executors, or co-trustee or co-trustees, or successor or successors in trust (as the case may be), at any time thereafter; and every such co-executor or co-trustee, or successor, (29) so appointed, shall, when entering upon his trust, by virtue of his appointment, and without the necessity of further deed, assignment or conveyance, be clothed and invested with the same title and estate as any of the original executors, or original trustees (as may be) as fully and effectually as though originally appointed and constituted by this will.

In no case shall it be necessary for any trustee, or successor, in resigning, to apply to any court for the purpose of having his resignation accepted, but such resignation may be tendered to, and accepted by, the remaining or

continuing trustees or trustee, or if none, then by his successor or successors in trust; and the acceptance of such resignation by such remaining or continuing trustees or trustee, or by such successor or successors in trust, shall be conclusive upon all parties in interest and effectual for all purposes.

The executors, or trustees of any trust, may at any time or times, pursuant to the powers hereinbefore conferred upon them, increase or diminish their number.

I expressly ordain that any person may resign, refuse or renounce one or more offices or trusts under this will, whether as executor or trustee, without being thereby bound or obligated to resign, refuse or renounce all.

Pursuant to the powers herein granted, a separate trustee or set of trustees may at any time or times be appointed for any fund or any part of any trust property held on trusts distinct from those relating to any other part or parts of such trust property, and any one or more of the then acting trustees may be appointed or remain such separate trustee, or one or more of such separate set of trustees.

The recital contained in any deed or other instrument executed by any trustees or trustee, of the death, resignation, refusal, disqualification, incapacity, or other inability to act, (30) of any other or previous trustee, or of the age or death of any beneficiary or other party in interest, shall be sufficient evidence of the truth thereof as to any third party.

In case such circumstances should at any time or times arise as to authorize and make it essential at any time
30 or times for a court of competent jurisdiction, upon proper application, to appoint any trustee or trustees, under any section or provision of this will, such appointee or appointees may, by the order or decree of such court, be clothed and invested not only with all the title and estate, but also with all or any powers (discretionary, as well as other), rights and privileges, herein conferred upon or vested in any original trustees, save only that such appointee or appointees, unless a duly qualified trust company having an unimpaired capital of at least One million dollars, shall not by virtue hereof be relieved of giving bond with good and sufficient surety and properly conditioned.

It is my desire that there shall always be, if practicable, at least two trustees of and under the aforesaid trust cre-

ated by the preceding Sixteenth section of this my will, unless the office be at the time filled by a duly qualified trust company. Should it, therefore, through the death, or through the resignation, renunciation, refusal, disqualification, incapacity, or other inability to act of any of the trustees, so happen that there is only one trustee (not a trust company) remaining, then I request such remaining or continuing trustee, as soon as practicable, by an instrument in writing, signed, sealed and acknowledged as aforesaid, to appoint a co-trustee or co-trustees to act with him or her. Yet while it is my desire that there shall always be, if practicable, two trustees, still, until a successor or co-trustee has entered upon his office, the remaining or continuing trustee for the time being may, until a successor or co-trustee has entered upon his office, exercise and execute all the powers (discretionary, as well as other), (31) rights and privileges herein conferred upon or vested in the original trustees.

Twentieth: I hereby nominate and appoint my wife, Sara H. Schaffner, and my friend, Lessing Rosenthal, both of Chicago, Illinois, and the survivor of them, or such one of them as may qualify, executors of this my last will and testament, and direct that neither of them shall be obliged to give or enter into bond or security for the faithful performance of this trust.

The executors shall have full power to administer my affairs and settle my whole estate as to them may seem meet and proper, without the interference of, direction, or authority from any court. They shall have full power to compromise and compound any and all claims either in favor of or against my estate, and to give full receipts and discharges, and to do and perform whatever other acts in relation to my estate they may think necessary, desirable, or expedient in the premises.

The executors shall also, and without the necessity of making application to any court, have full power to sell and convert and transfer or otherwise dispose of any personal property, held by or belonging to them, as executors, at any time, upon whatever terms and conditions may seem meet to them; and they also may make distribution of their personal estate in such investments, securities, or assets as may then be on hand, without being obliged to convert any of the same into cash for the purposes of such distribution; and may fix and determine the value of any investment, security, or other asset, transferred or handed

over to any legatee in payment of his or her legacy, or otherwise, in making distribution.

31 My estate may be closed and settled in Probate Court within the statutory time, or as soon as may appear practicable or convenient to my executors thereafter, and upon such closing and settlement any estate that may not then be collected, reduced to possession or fully administered, shall, if not inconvenient, be (32) transferred to the trustees of my residuary estate appointed and constituted by the foregoing Sixteenth section, whose receipt in respect thereof shall be sufficient to discharge my executors from all further accounting in regard thereto or liability in respect thereof.

Twenty-first: The respective trustees, or any of them, shall not be liable for mistakes in judgment, or shrinkages, or depreciation in value of investments or securities retained, held or purchased by them, nor for failing to make, or dispensing with, any investigation, nor for any defect or defects in title, nor for the insufficiency or deficiency of any investments or securities, nor for any other loss, unless the same shall happen through their own wilful default.

The executors of my will, and the respective trustees appointed or acting at any time under any section thereof, shall not be accountable or liable for the act, omission, default, dereliction or neglect of one another, nor for any bank, banker, broker, agent or attorney appointed or selected by them, respectively, or by any of them, nor for any person or corporation, with whom, or into whose custody, any trust moneys or property may be deposited or come.

Every executor and every trustee shall be responsible for so much money only as shall actually come into his own hands, and shall not be answerable for any involuntary loss or losses, and any executor or trustee who shall turn over any money or property to his co-executor or co-trustee (as the case may be), or shall do or concur in any act enabling his co-executor or co-trustee to receive any moneys or property for the general purposes of my will, or for any definite purpose authorized by my will, shall not be obliged to see to the due application thereof, nor shall such executor or trustee (as the case may be) be subsequently rendered responsible either by express notice or by intimation of the improper applica- (33) tion of such moneys or property.

No trustee acting at any time under any section of this

will (unless the instrument appointing any new or substituted trustee expressly shall provide otherwise) shall be required to enter into bond or security for the faithful performance of his or her trust.

Twenty-second: I expressly declare that each of my executors, as well as every of the trustees herein appointed, shall be entitled to, and shall receive, recover and retain fair and reasonable compensation for all services performed by them, respectively, in the execution of their respective trusts, as I expect them to devote the necessary time to the administration of my affairs and do not want this to involve any more of a sacrifice on their part than absolutely essential. The amounts charged or taken for such compensation by the executors or trustee (as the case may be), from time to time, shall be deemed to be fair and reasonable and shall not be disturbed unless clearly shown to be grossly excessive. The compensation of each of several executors or trustees (as the case may be) need not in any case be the same.

I also express the desire that the trustees of the
32 respective trusts created by or under this will retain my friend, Lessing Rosenthal, as their counsel, to advise them touching the performance of their duties and the management and administration of their respective trusts, and otherwise to act as their attorney. I make this request for the reason that Lessing Rosenthal has been my personal counsel for many years and is familiar and conversant with my affairs and wishes, and that his relation to me has long been intimate and close.

The fact that Lessing Rosenthal is appointed as one of my executors under this will, or that any attorney or counsellor-at-law may be acting, at any time, as executor or as trustee under my will or in any trust or fiduciary capacity under any section or provision (34) of this will, shall not disqualify or preclude him, or any firm of which he may be a member at any time, from acting as attorney or attorneys or counsel for my executors, or for the trustees of any trust under this will, and from taking, charging and receiving compensation as attorney and counsel, as well as executor, or trustee (as the case may be), but he or they shall be expressly entitled so to do.

Nothing in this will contained, and no trust assumed thereunder, shall be deemed to make any person at any time acting as executor or trustee under this will ineligible for election or service as a director or officer of, or counsel to, any corporation in the shares of which he may be

interested as such executor, or trustee, or otherwise, or preclude such person from taking and receiving as such director or officer, or counsel, and for his personal use, all the salary, compensation or emolument that may be attached or incident to or may appertain to his office as such director, officer, or counsel; nor shall any executor or executors, trustee or trustees, or any of them, at any time in any wise be barred from voting for themselves or himself, or any of them, as directors or director, or officers or officer, of any such corporation.

Twenty-third: Inasmuch as I am largely interested in the corporation of Hart, Schaffner & Marx, and have confidence in the continued success of said corporation, therefore I expressly authorize and empower (without, however, intending to restrict, limit or impair any power hereinbefore conferred upon them) the trustees under the trust created by the preceding Sixteenth section of my will, in their own discretion, to continue to hold any shares of the capital stock of Hart, Schaffner & Marx, both preferred and common (or any interest in or in respect of any such shares), which my executors may in distribution or otherwise transfer to said trustees, or which said trustees may in any wise receive by virtue of the bequest made by said Sixteenth section, or may in any other manner (35) acquire.

Though the discretion vested in said trustees shall be absolute and unrestricted, I counsel them particularly not to sell or dispose of the shares of Hart, Schaffner & Marx stock, or the interest in, or in respect of such shares, which may be transferred to them, or which they may acquire, unless and until they, in their own unlimited judgment and after careful reflection, feel that it is for the ultimate good of the beneficiaries of said trust or of the business of Hart, Schaffner & Marx that such a course be followed.

The trustees shall be entitled to, and receive, their part of any stock dividend that may at any time be declared upon any shares of stock so held by them during the continuance of said trust, but every such stock divi-
33 dend shall be regarded not as income under the provisions of said Sixteenth section, but the shares of stock thus received shall be regarded as part of the principal or corpus of the trust estate and shall be held, managed and controlled and ultimately disposed of, and meanwhile the dividends thereon applied by said trustees, in

all respects in the same manner as may be done with reference to the original shares then held by said trustees.

And I expressly authorize and empower my executors, and also the trustees of and under the trust created by the preceding Sixteenth section of my will, not only to represent and vote any shares of stock of Hart, Schaffner & Marx and of any other corporation that may be held by them respectively (or any interest therein or in respect thereof) for all purposes, in person or by proxy, during the time the same may be so held by them, respectively, but also in their discretion at any time or times to join or unite with any other stockholder or stockholders or other parties beneficially or otherwise interested in any shares of stock for the purpose of securing the more efficient management of any corporation whose shares may be held by them, respectively, or wherein they may be in any wise interested; and to that end also to enter into any voting (36) trust or other lawful agreement to concentrate or unify the control of any stock of any corporation, embodying such terms and provisions as may appear acceptable to the executors or trustees (as the case may be), and to deposit the shares or interest held by them, respectively, under any such trust or agreement, all as the executors or the trustees (as the case may be) in their own judgment may deem prudent.

And the executors, as well as the trustees aforesaid, are also expressly empowered not only to carry out any agreement which I may have entered into prior to my death relative to any shares of stock possessed by me, or wherein or in respect of which I may have a beneficial or other interest, but also to join in the enlargement or in the modification of such agreement in any way; all as the executors or the trustees (as the case maybe), in their own discretion, may regard desirable.

Twenty-fourth: I do hereby specially will and ordain that prior to the arrival of the respective periods of distribution in this my will fixed, the income payable to any child of mine, or descendant of any child of mine, derived from any property or estate directed to be held in trust until the arrival of such period of distribution, shall not be anticipated by such beneficiary, or be subject to any assignment by him or her, or lien of any kind or nature, or to any alienation whatever, either voluntary or involuntary, nor to any lien, attachment, judgment or decree against him or her, nor to any of his or her debts, nor to any other voluntary or involuntary disposition.

And should any beneficiary attempt in any manner to dispose of, encumber, or charge the same, or any part thereof, or in case of his or her bankruptcy or the rendition of any judgment or decree against the same, or of the levy of any execution or writ of attachment thereon, or the attempt of any garnishment or sequestration thereof, then such net income (which would otherwise be paid over (37) directly to such beneficiary) may, in the discretion of the respective trustees, and as they may deem best, be applied directly for the support and maintenance of such beneficiary, or the support and maintenance of his or her family, or both, or be allowed to accumulate
34 in the hands of said trustees and be treated and form a part of the corpus of the respective trust estate, to be invested and controlled and be disposed of as the rest of said corpus; provided, however, that any such accumulations, or any part thereof, shall be liable to be applied from time to time by the trustees, as it may appear proper or desirable to them, in like manner as if the same were part of the income derived in the then current year from the trust estate, and provided, further, that no accumulation of income shall (irrespective of the duration of any trust) be permitted by virtue of any provision of this section after the term of twenty-one (21) years from and after my death; and provided further that nothing herein contained shall be construed to refer to, or to postpone, the vesting of any property beyond the arrival of the respective periods of distribution as hereinbefore in the Sixteenth section of this my will directed, and provided also that if any provision of this Section Twenty-fourth should be deemed illegal, the same shall not in any wise, or in any manner, affect any previous section of this will, but any provision in this Section Twenty-fourth contained that might otherwise thus injuriously affect any other provision of this will shall be rejected and held for nought.

Twenty-fifth: The trust created by the preceding Sixteenth section of my will may, for convenience, be designated and referred to as the "Joseph Schaffner Residuary Trust".

The naming of any fund or trust in this my will, such as the "Clarence Schaffner Family Trust" and the "Joseph Schaffner Residuary Trust" is done merely for the purpose of identification, convenience and brevity, and shall not be held to define, extend, (38) broaden, limit or restrict the uses or purposes of any such fund or trust.

In Witness Whereof, I have hereunto set my hand, this Twelfth day of April, A. D. 1918.

Joseph Schaffner

This is to Certify that the foregoing instrument, consisting of thirty-eight (38) typewritten pages (this included), was at the date thereof signed, published and declared by the testator, Joseph Schaffner, as and for his last will and testament, in the presence of us, who in his presence and at his request and in the presence of each other, have hereunto subscribed our names as witnesses thereto.

Samson Gusdorf
Otto L. Schmidt
Isaac A. Abt
Solomon Strouse

35 Will proved and admitted to record in open Court this 20 day of June, A. D. 1918.

Henry Horner,
Probate Judge.

State of Illinois, } ss.
County of Cook, }

IN THE PROBATE COURT OF COOK COUNTY.

Proved and admitted to record in open Court this 20 day of June, A. D. 1918.

John A. Cervenka,
Clerk.

Filed May 17, 1918.
John A. Cervenka,
Clerk.

36 Endorsed: In the District Court of the United States. * * (Caption—47134) * * Complaint. Filed May 7, 1938, at 9:48 o'clock a. m., Henry W. Freeman, Clerk. 10.00 Judge Wilkerson General Calendar No. 1.

37 EXHIBIT "B".

Assignment to Halle S. Weil of $36,000 Income During 1930 Out of the Joseph Schaffner Residuary Trust.

Know All Men By These Presents That I, Sara H. Schaffner, of Chicago, Illinois, for and in consideration of One dollar ($1.00) to me in hand paid, the receipt whereof is hereby acknowledged, have sold, assigned, set over and transferred, and by these presents do sell, assign, set over and transfer, unto Halle S. Weil, at present residing in New York, New York, such portion of the income as shall equal the sum of Thirty-six thousand dollars ($36,000) from and out of the net income that may be derived during the year 1930 from the trust estate created by the Sixteenth section of the last will and testament of Joseph Schaffner, deceased, and directed by said Sixteenth section to be paid over to me for and during my natural life, which said trust estate created by said Sixteenth section has been designated and is commonly referred to as the "Joseph Schaffner Residuary Trust."

The said Halle S. Weil shall be entitled to receive and collect the said sum of Thirty-six thousand dollars ($36,000) so assigned to her as aforesaid; and the trustees of the Joseph Schaffner Residuary Trust are hereby directed to pay to her the said sum of Thirty-six thousand dollars ($36,000), in installments at such time or times during the year 1930 as may appear reasonable to said trustees.

The said trustees may pay said sum so assigned out of whatever specific income derived as aforesaid from said trust estate during the year 1930 they may elect or appropriate for that purpose, and their selection and allocation shall be conclusive upon the said Halle S. Weil, and any allocation of the amount so paid to Halle S. Weil hereunder may be made either from time to time during the course of the year 1930, or at the close of the year 1930, or in connection with the preparation or making of the income tax return of said trustees for the year 1930.

38 In paying over and transferring to the said Halle S. Weil the said income so assigned to her as aforesaid, the said trustees shall, in their discretion, be entitled to demand receipts and releases.

The assignment hereby made is absolute and irrevocable, and shall be wholly free from my individual control

or direction. The moneys that shall be so paid over to the said Halle S. Weil pursuant to this assignment shall be deemed income in her hands and she shall be regarded as substituted pro tanto as beneficiary for the year 1930 (to the extent of the said Thirty-six thousand dollars) in my place; and in consideration of the execution of this instrument, the said Halle S. Weil does by the acceptance thereof, as well as by the acceptance of any sum paid by said trustees pursuant thereto, agree to protect and indemnify me, as well as the said trustees, and each and every of us and them, from and against any income tax that may be assessed or demanded on account of the said Thirty-six thousand dollars so assigned as aforesaid, or any part thereof.

The assignment made as aforesaid shall not relate to any income accruing or to be derived from said trust estate subsequent to the year 1930, or to affect the same in any wise.

In Witness Whereof, I have hereunto set my hand and seal this twenty-third day of December, 1929.

Sara H. Schaffner (Seal)

Signed, sealed and delivered
in the presence of:
Florence E. Lund,
Carola Nedella.

39 EXHIBIT "C".

Assignment to Margaret S. Marx of $30,000 Income During 1930 Out of the Joseph Schaffner Residuary Trust.

Know All Men By These Presents That I, Sara H. Schaffner, of Chicago, Illinois, for and in consideration of One dollar ($1.00) to me in hand paid, the receipt whereof is hereby acknowledged, have sold, assigned, set over and transferred, and by these presents do sell, assign, set over and transfer, unto Margaret S. Marx, of New York, New York, such portion of the income as shall equal the sum of Thirty thousand dollars ($30,000) from and out of the net income that may be derived during the year 1930 from the trust estate created by the Sixteenth section of the last will and testament of Joseph Schaffner, deceased, and directed by said Sixteenth section to be paid over to me for and during my natural life, which said trust estate created by said Sixteenth section

has been designated and is commonly referred to as the "Joseph Schaffner Residuary Trust."

The said Margaret S. Marx shall be entitled to receive and collect the said sum of Thirty thousand dollars ($30,000) so assigned to her as aforesaid, and the trustees of the Joseph Schaffner Residuary Trust are hereby directed to pay to her the said sum of Thirty thousand dollars ($30,000), in installments at such time or times during the year 1930 as may appear reasonable to said trustees.

The said trustees may pay said sum so assigned out of whatever specific income derived as aforesaid from said trust estate during the year 1930 they may elect or appropriate for that purpose, and their selection and allocation shall be conclusive upon the said Margaret S. Marx, and any allocation of the amount so paid to Margaret S. Marx hereunder may be made either from time to time during the course of the year 1930, or at the close of the year 1930, or in connection with the preparation or making of the income tax return of said trustees for the year 1930.

In paying over and transferring to the said Margaret S. Marx the said income so assigned to her as aforesaid, the said trustees shall, in their discretion, be entitled to demand receipts and releases.

The assignment hereby made is absolute and irrevocable, and shall be wholly free from my individual control or direction. The moneys that shall be so paid over to the said Margaret S. Marx pursuant to this assignment shall be deemed income in her hands and she shall be regarded as substituted pro tanto as beneficiary for the year 1930 (to the extent of the said Thirty thousand dollars) in my place; and in consideration of the execution of this instrument, the said Margaret S. Marx does by the acceptance thereof, as well as by the acceptance of any sum paid by said trustees pursuant thereto, agree to protect and indemnify me, as well as the said trustees, and each and every of us and them, from and against any income tax that may be assessed or demanded on account of the said Thirty thousand dollars ($30,000) so assigned as aforesaid, or any part thereof.

The assignment made as aforesaid shall not relate to any income accruing or to be derived from said trust estate subsequent to the year 1930, or to affect the same in any wise.

In Witness Whereof, I have hereunto set my hand and seal this twenty-third day of December, 1929.

Sara H. Schaffner (Seal)

Signed, sealed and delivered
in the presence of:
Florence E. Lund,
Carola Nedella.

41 EXHIBIT "D".

Assignment to Joseph Halle Schaffner of $18,000 Income During 1930 Out of the Joseph Schaffner Residuary Trust.

Know All Men By These Presents That I, Sara H. Schaffner, of Chicago, Illinois, for and in consideration of One dollar ($1.00) to me in hand paid, the receipt whereof is hereby acknowledged, have sold, assigned, set over and transferred, and by these presents do sell, assign, set over and transfer, unto Joseph Halle Schaffner, of Chicago, Illinois, such portion of the income as shall equal the sum of Eighteen thousand dollars ($18,000) from and out of the net income that may be derived during the year 1930 from the trust estate created by the Sixteenth section of the last will and testament of Joseph Schaffner, deceased, and directed by said Sixteenth section to be paid over to me for and during my natural life, which said trust estate created by said Sixteenth section has been designated and is commonly referred to as the "Joseph Schaffner Residuary Trust."

The said Joseph Halle Schaffner shall be entitled to receive and collect the said sum of Eighteen thousand dollars ($18,000) so assigned to him as aforesaid, and the trustees of the Joseph Schaffner Residuary Trust are hereby directed to pay to him the said sum of Eighteen thousand dollars ($18,000), in installments at such time or times during the year 1930 as may appear reasonable to said trustees.

The said trustees may pay said sum so assigned out of whatever specific income derived as aforesaid from said trust estate during the year 1930 they may elect or appropriate for that purpose, and their selection and allocation shall be conclusive upon the said Joseph Halle Schaffner, and any allocation of the amount so paid to Joseph Halle Schaffner hereunder may be made either

from time to time during the course of the year 1930, or at the close of the year 1930, or in connection with
42 the preparation or making of the income tax return of said trustees for the year 1930.

In paying over and transferring to the said Joseph Halle Schaffner the said income so assigned to him as aforesaid, the said trustees shall, in their discretion, be entitled to demand receipts and releases.

The assignment hereby made is absolute and irrevocable, and shall be wholly free from my individual control or direction. The moneys that shall be so paid over to the said Joseph Halle Schaffner pursuant to this assignment shall be deemed income in his hands and he shall be regarded as substituted pro tanto as beneficiary for the year 1930 (to the extent of the said Eighteen thousand dollars) in my place; and in consideration of the execution of this instrument, the said Joseph Halle Schaffner does by the acceptance thereof, as well as by the acceptance of any sum paid by said trustees pursuant thereto, agree to protect and indemnify me, as well as the said trustees, and each and every of us and them, from and against any income tax that may be assessed or demanded on account of the said Eighteen thousand dollars ($18,000) so assigned as aforesaid, or any part thereof.

The assignment made as aforesaid shall not relate to any income accruing or to be derived from said trust estate subsequent to the year 1930, or to affect the same in any wise.

In Witness Whereof, I have hereunto set my hand and seal this twenty-third day of December, 1929.

Sara H. Schaffner (Seal)

Signed, sealed and delivered
in the presence of:
Florence E. Lund,
Carola Nedella.

43 EXHIBIT "E".

Assignment to Sumner S. Weil of $18,000 Income During 1931 Out of the Joseph Schaffner Residuary Trust.

Know All Men By These Presents That I, Sara H. Schaffner, of Chicago, Illinois, for and in consideration of One dollar ($1.00) to me in hand paid, the receipt whereof is hereby acknowledged, have sold, assigned, set over

and transferred, and by these presents do sell, assign, set over and transfer, unto Sumner S. Weil, of New York, New York, such portion of the income as shall equal the sum of Eighteen thousand dollars ($18,000) from and out of the net income that may be derived during the year 1931 from the trust estate created by the Sixteenth section of the last will and testament of Joseph Schaffner, deceased, and directed by said Sixteenth section to be paid over to me for and during my natural life, which said trust estate created by said Sixteenth section has been designated and is commonly referred to as the "Joseph Schaffner Residuary Trust."

The said Sumner S. Weil shall be entitled to receive and collect the said sum of Eighteen thousand dollars ($18,000) so assigned to him as aforesaid, and the trustees of the Joseph Schaffner Residuary Trust are hereby directed to pay to him the said sum of Eighteen thousand dollars ($18,000), in instalments at such time or times during the year 1931 as may appear reasonable to said trustees.

The said trustees may pay said sum so assigned out of whatever specific income derived as aforesaid from said trust estate during the year 1931 they may elect or appropriate for that purpose, and their selection and allocation shall be conclusive upon the said Sumner S. Weil, and any allocation of the amount so paid to Sumner S. Weil hereunder may be made either from time to time during the course of the year 1931, or at the close of the year 1931, or in connection with the preparation or making of the income tax return of said trustees for the year 1931.

44 In paying over and transferring to the said Sumner S. Weil the said income so assigned to him as aforesaid, the said trustees shall, in their discretion, be entitled to demand receipts and releases.

The assignment hereby made is absolute and irrevocable, and shall be wholly free from my individual control or direction. The moneys that shall be so paid over to the said Sumner S. Weil pursuant to this assignment shall be deemed income in his hands and he shall be regarded as substituted pro tanto as beneficiary for the year 1931 (to the extent of the said Eighteen thousand dollars) in my place; and in consideration of the execution of this instrument, the said Sumner S. Weil does by the acceptance thereof, as well as by the acceptance of any sum paid by said trustees pursuant thereto, agree to protect and indem-

nify me, as well as the said trustees, and each and every of us and them, from and against any income tax that may be assessed or demanded on account of the said Eighteen thousand dollars ($18,000) so assigned as aforesaid, or any part thereof.

The assignment made as aforesaid shall not relate to any income accruing or to be derived from said trust estate subsequent to the year 1931, or to affect the same in anywise.

In Witness Whereof, I have hereunto set my hand and seal this fourteenth day of November, 1930.

Sara H. Schaffner (Seal)

Signed, sealed and delivered
in the presence of:
Florence E. Lund
Carola Nedella

45 EXHIBIT "F."

Assignment to Margaret S. Millhauser of $18,000 Income During 1931 Out of the Joseph Schaffner Residuary Trust.

Know All Men By These Presents That I, Sara H. Schaffner, of Chicago, Illinois, for and in consideration of One dollar ($1.00) to me in hand paid, the receipt whereof is hereby acknowledged, have sold, assigned, set over and transferred, and by these presents do sell, assign, set over and transfer, unto Margaret S. Millhauser, of New York, New York, such portion of the income as shall equal the sum of Eighteen thousand dollars ($18,000) from and out of the net income that may be derived during the year 1931 from the trust estate created by the Sixteenth section of the last will and testament of Joseph Schaffner, deceased, and directed by said Sixteenth section to be paid over to me for and during my natural life, which said trust estate created by said Sixteenth section has been designated and is commonly referred to as the "Joseph Schaffner Residuary Trust."

The said Margaret S. Millhauser shall be entitled to receive and collect the said sum of Eighteen thousand dollars ($18,000) so assigned to her as aforesaid, and the trustees of the Joseph Schaffner Residuary Trust are hereby directed to pay to her the said sum of Eighteen thousand dollars ($18,000), in installments at such time or times

during the year 1931 as may appear reasonable to said trustees.

The said trustees may pay said sum so assigned out of whatever specific income derived as aforesaid from said trust estate during the year 1931 they may elect or appropriate for that purpose, and their selection and allocation shall be conclusive upon the said Margaret S. Millhauser, and any allocation of the amount so paid to Margaret S. Millhauser hereunder may be made either from time to time during the course of the year 1931, or at close of the year 1931, or in connection with the preparation or making of the income tax return of said trustees for the year 1931.

46 In paying over and transferring to the said Margaret S. Millhauser the said income so assigned to her as aforesaid, the said trustees shall, in their discretion, be entitled to demand receipts and releases.

The assignment hereby made is absolute and irrevocable, and shall be wholly free from my individual control or direction. The moneys that shall be so paid over to the said Margaret S. Millhauser pursuant to this assignment shall be deemed income in her hands and she shall be regarded as substituted pro tanto as beneficiary for the year 1931 (to the extent of the said Eighteen thousand dollars) in my place; and in consideration of the execution of this instrument, the said Margaret S. Millhauser does by the acceptance thereof, as well as by the acceptance of any sum paid by said trustees pursuant thereto, agree to protect and indemnify me, as well as the said trustees, and each and every of us and them, from and against any income tax that may be assessed or demanded on account of the said Eighteen thousand dollars ($18,000) so assigned as aforesaid, or any part thereof.

The assignment made as aforesaid shall not relate to any income accruing or to be derived from said trust estate subsequent to the year 1931, or to affect the same in any wise.

In Witness Whereof, I have hereunto set my hand and seal this fourteenth day of November, 1930.

Sara H. Schaffner (Seal)

Signed, sealed and delivered
in the presence of:
Florence E. Lund
Carola Nedella

47 EXHIBIT "G."

Assignment to Joseph Halle Schaffner of $18,000 Income During 1931 Out of the Joseph Schaffner Residuary Trust.

Know All Men By These Presents That I, Sara H. Schaffner, of Chicago, Illinois, for and in consideration of One dollar ($1.00) to me in hand paid, the receipt whereof is hereby acknowledged, have sold, assigned, set over and transferred, and by these presents do sell, assign, set over and transfer, unto Joseph Halle Schaffner, of Chicago, Illinois, such portion of the income as shall equal the sum of Eighteen thousand dollars ($18,000) from and out of the net income that may be derived during the year 1931 from the trust estate created by the Sixteenth section of the last will and testament of Joseph Schaffner, deceased, and directed by said Sixteenth section to be paid over to me for and during my natural life, which said trust estate created by said Sixteenth section has been designated and is commonly referred to as the "Joseph Schaffner Residuary Trust."

The said Joseph Halle Schaffner shall be entitled to receive and collect the said sum of Eighteen thousand dollars ($18,000) so assigned to him as aforesaid, and the trustees of the Joseph Schaffner Residuary Trust are hereby directed to pay to him the said sum of Eighteen thousand dollars ($18,000), in installments at such time or times during the year 1931 as may appear reasonable to said trustees.

The said trustees may pay said sum so assigned out of whatever specific income derived as aforesaid from said trust estate during the year 1931 they may elect or appropriate for that purpose, and their selection and allocation shall be conclusive upon the said Joseph Halle Schaffner, and any allocation of the amount so paid to Joseph Halle Schaffner hereunder may be made either from time to time during the course of the year 1931, or at the close of the year 1931, or in connection with the preparation or making of the income tax return of said trustees for the year 1931.

48 In paying over and transferring to the said Joseph Halle Schaffner the said income so assigned to him as aforesaid, the said trustees shall, in their discretion, be entitled to demand receipts and releases.

The assignment hereby made is absolute and irrevocable, and shall be wholly free from my individual control or direction. The moneys that shall be so paid over to the said Joseph Halle Schaffner pursuant to this assignment shall be deemed income in his hands and he shall be regarded as substituted pro tanto as beneficiary for the year 1931 (to the extent of the said Eighteen thousand dollars) in my place; and in consideration of the execution of this instrument, the said Joseph Halle Schaffner d[illegible]s by the acceptance thereof, as well as by the acceptance of any sum paid by said trustees pursuant thereto, agree to protect and indemnify me, as well as the said trustees, and each and every of us and them, from and against any income tax that may be assessed or demanded on account of the said Eighteen thousand dollars ($18,000) so assigned as aforesaid, or any part thereof.

The assignment made as aforesaid shall not relate to any income accruing or to be derived from said trust estate subsequent to the year 1931, or to affect the same in any wise.

In Witness Whereof, I have hereunto set my hand and seal this fourteenth day of November, 1930.

Sara H. Schaffner (Seal)

Signed, sealed and delivered
in the presence of:
Florence E. Lund
Carola Nedella

49

EXHIBIT "H."

Form 843

Treasury Department

Internal Revenue Service

Revised June, 1930

Claim

To Be Filed With the Collector Where Assessment Was Made or Tax Paid

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The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

☒ Refund of Tax Illegally Collected.
☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
☐ Abatement of Tax Assessed (not applicable to estate or income taxes).

Collector's Stamp
(Date Received)
Received Jan. 18, 1936 Collector Int. Rev. 1st Dist. Ill.

State of Illinois } ss.
County of Cook }

Type or Print

Name of taxpayer Sara H. Schaffner

Business address .....

Residence 4819 Greenwood Avenue, Chicago, Illinois.

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed First Illinois
2. Period (if for income tax, make separate form for each taxable year) from Jan. 1, 1930, to Dec. 31, 1930.
3. Character of assessment or tax Income Tax

4. Amount of assessment, $19,730.68; dates of payment Feb. 14, 1934, $19,730.68 (includes interest of $2909.39)
5. Date stamps were purchased from the Government .....
6. Amount to be refunded or such greater amount as is legally refundable $19,730.68
7. Amount to be abated (not applicable to income or estate taxes) $.....
8. The time within which this claim may be legally filed expires, under Section ..... of the Revenue Act of 19....., on ....., 19.....

The deponent verily believes that this claim should be allowed for the following reasons: The Commissioner of Internal Revenue asserted an additional tax for the year 1930 of $16,721.29 against taxpayer in his notice of deficiency dated Nov. 7, 1933 (Symbols IT:AR:D:-2:ELA-60-D) and taxpayer filed no petition to the Board of Tax Appeals but paid said additional tax and interest thereon on Feb. 14, 1934. The additional tax was based on income of $84,106.46, alleged to be taxable income to the taxpayer from the Joseph Schaffner Residuary Trust. The Taxpayer claims that said amount of $84,106.46 is not taxable income to her in 1930, but is taxable to others who received said income and to whom the taxpayer had irrevocably assigned said income prior to 1930.

Wherefore taxpayer claims a refund of said tax of $16,821.29 and the interest of $2,909.39 paid thereon, plus interest on said amount of $19,730.68 from the date of payment on Feb. 14, 1934, to the date of refund.

An oral hearing in the income tax unit is respectfully requested.

Signed Sara H. Schaffner

Sworn to and subscribed before me this 18th day of January, 1936.

William C. Brucks,
Notary Public.

(Seal)
(William C. Brucks)
(Cook County, Ill.)
(Notary Public)

50

EXHIBIT "I."

Form 843

Treasury Department

Internal Revenue Service

Revised June, 1930

Claim

To Be Filed With the Collector Where Assessment Was Made or Tax Paid

---

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

☒ Refund of Tax Illegally Collected.
☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.
☐ Abatement of Tax Assessed (not applicable to estate or income taxes).

Collector's Stamp
(Date Received) Received Jan. 18, 1936 Collector of Int. Rev. 1st Dist. Ill.

State of Illinois } ss.
County of Cook }

Type or Print
Name of taxpayer Sara H. Schaffner
Business address .....
Residence 4819 Greenwood Avenue, Chicago, Illinois.

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed First Illinois
2. Period (if for income tax, make separate form for each taxable year) from Jan. 1, 1931, to Dec. 31, 1931
3. Character of assessment or tax Income Tax

4. Amount of assessment, $11,685.39; dates of payment June 11, 1934, $11,685.39 (includes interest of $2909.39)
5. Date stamps were purchased from the Government .....
6. Amount to be refunded or such greater amounts as is legally refundable $11,685.39
7. Amount to be abated (not applicable to income or estate taxes) $.....
8. The time within which this claim may be legally filed expires, under Section ..... of the Revenue Act of 19....., on ....., 19.....

The deponent verily believes that this claim should be allowed for the following reasons: The Commissioner of Internal Revenue asserted an additional tax for the year 1931 of $10,326.03 against taxpayer in his notice of deficiency dated Mar. 6, 1934 (Symbols IT:AR:D-2:ELA-60-D) and taxpayer filed no petition to the United States Board of Tax Appeals, but paid said additional tax and interest thereon on June 11, 1934. The additional tax was based on income of $54,000 alleged to be taxable income to the taxpayer from the Joseph Schaffner Residuary Trust. The taxpayer claims that said amount of $54,000 is not taxable income to her in 1931, but is taxable to others who received said income and to whom the taxpayer had irrevocably assigned said income prior to 1931.

Wherefore taxpayer claims a refund of said tax of $10,326.03 and the interest of $1359.36 paid thereon, plus interest on said amount of $11,685.39 from the date of payment on June 11, 1934 to the date of refund.

An early hearing on this claim in the income tax unit is respectfully requested.

Signed Sara H. Schaffner

Sworn to and subscribed before me this 18th day of January, 1936.

William C. Brucks,
Notary Public.

(Notarial Seal)

51 EXHIBIT "J".

Treasury Department.
Washington.

May 20, 1936.

Office of Commissioner of Internal Revenue.
IT:C:CC-4-CCP.

Mrs. Sara H. Schaffner
4819 Greenwood Avenue
Chicago, Illinois.

In Re: Claims for refund of $19,730.68 and $11,685.39
For the years 1930 and 1931.

Madam:

Reference is made to Bureau letter dated May 8, 1936 wherein you were informed that the claims for refund indicated above would be disallowed. The letter also stated the reasons for the proposed disallowance.

The claims having been disallowed or rejected on Schedule numbered 22742, this notice of disallowance is sent to you by registered mail as required by Section 1103 (a) of the Revenue Act of 1932.

Respectfully,
Guy T. Helvering, *Commissioner.*
By Chas. T. Russell,
Deputy Commissioner.

52 And on, to wit, the 8th day of July, 1938, came the Defendant by his attorneys and filed in the Clerk's office of said Court his certain Answer in words and figures following, to wit: Filed July 8, 1938.

53 In the District Court of the United States.
* * * (Caption—47134) * *

ANSWER.

Now comes the defendant, Carter H. Harrison, Collector of Internal Revenue for the First District of Illinois, by his attorney, Michael L. Igoe, United States Attorney, and, for answer to the plaintiff's complaint filed herein

and to the alleged cause of action stated in said complaint, says that each and every allegation of fact alleged in the plaintiff's complaint is hereby specifically denied except such allegations of fact as are specifically admitted in this answer, and the defendant says:

1. Defendant admits the allegations contained in paragraph 1 of the plaintiff's complaint.

2. Defendant admits the allegations contained in paragraph 2 of the complaint.

3. Defendant admits the allegations contained in paragraph 3 of the complaint.

54 4. Answering paragraph 4 of the plaintiff's complaint, defendant admits that on March 15, 1931, the plaintiff filed with the then acting Collector of Internal Revenue an income tax return, Form 1040, reporting an income tax liability for the calendar year 1930 in the amount of $23,392.88. The defendant admits that the plaintiff paid said tax to the then acting Collector of Internal Revenue in installments during the year 1931 on the dates and in the amounts set forth and alleged in paragraph 4 of the plaintiff's complaint. The defendant denies each and every other allegation of fact contained in said paragraph 4 of the plaintiff's complaint not specifically admitted herein.

5. Answering paragraph 5 of the plaintiff's complaint, defendant admits that on March 15, 1932, the plaintiff filed with the then acting Collector of Internal Revenue an income tax return, Form 1040, reporting an income tax liability for the calendar year 1931 in the amount of $5,253.05. The defendant admits that the plaintiff paid said tax to the then acting Collector of Internal Revenue in installments during the year 1932 on the dates and in the amounts set forth and alleged in paragraph 5 of the plaintiff's complaint. The defendant denies each and every other allegation of fact contained in said paragraph 5 of the plaintiff's complaint not specifically admitted herein.

6. Answering paragraph 6 of the plaintiff's complaint, the defendant admits that the plaintiff was at all times mentioned in the complaint and now is the life beneficiary under a testamentary residuary trust established by the sixteenth section of the will of her deceased husband, Joseph Schaffner; admits that a copy of said will is attached to the plaintiff's complaint as Exhibit A; admits that on December 23, 1929, the plaintiff executed and delivered certain assignments of respective portions of the

income, as should equal the following respective sums,
55 from and out of the net income that might be derived during the calendar year 1930 from said testamentary residuary trust created by said will, and therein directed to be paid over to plaintiff for and during her natural life, as follows: $36,000 assigned to her daughter, Halle S. Weil (now deceased); $30,000 assigned to her daughter, Margaret S. Marx; and $18,000 assigned to her son, Joseph H. Schaffner; and the defendant admits that a copy of each of said assignments is attached to the plaintiff's complaint as Exhibits B, C and D, respectively. The defendant admits that on November 14, 1930, the plaintiff executed and delivered certain assignments of respective portions of the income, as should equal the following respective sums, from and out of the net income that might be derived during the calendar year 1931 from said testamentary residuary trust created by said will, and therein directed to be paid over to the plaintiff for and during her natural life, as follows: $18,000 assigned to her son-in-law, Sumner S. Weil; $18,000 assigned to her daughter, Margaret S. Millhauser (formerly Margaret S. Marx); and $18,000 assigned to her son, Joseph H. Schaffner; and the defendant admits that a copy of each of said assignments is attached to the plaintiff's complaint as Exhibits E, F and G, respectively. The defendant admits that the said respective portions of the income of the said testamentary residuary trust so assigned by the plaintiff on December 23, 1929, and derived during the calendar year 1930, were paid during such calendar year 1930 by the Trustees of said testamentary residuary trust to the respective assignees or their successors as follows: $15,000 to Halle S. Weil; $21,000 to the duly appointed and acting executors under the last will and testament of the said Halle S. Weil; $30,000 to Margaret S. Marx; and
56 $18,000 to Joseph H. Schaffner; that the said respective portions of the income of said testamentary trust so assigned by the plaintiff on November 14, 1930, and derived during the calendar year 1931 were paid during such calendar year 1931 by said Trustees of said testamentary residuary trust to the respective assignees as follows: $18,000 to Sumner S. Weil; $18,000 to Margaret S. Millhauser (formerly Margaret S. Marx); and $18,000 to Joseph H. Schaffner. The defendant admits that the plaintiff did not include as part of her gross income, in her income tax returns for the calendar years 1930 and 1931, any of the income derived by said testamentary residuary

trust during the calendar years 1930 and 1931, respectively, which was assigned by her and paid directly to said assignees. The defendant denies each and every allegation contained in paragraph 6 of the plaintiff's complaint not herein specifically admitted.

7. Answering paragraph 7 of the plaintiff's complaint, the defendant admits that on November 7, 1933, the Commissioner of Internal Revenue mailed, by registered mail, to the plaintiff a notice of deficiency in income taxes of $16,821.29 for the calendar year 1930; the defendant admits that the plaintiff did not file a petition with the United States Board of Tax Appeals appealing from such deficiency asserted in said notice of deficiency; the defendant admits that subsequent to the date of said notice of deficiency and prior to February 14, 1934, the Commissioner of Internal Revenue assessed the said additional income tax of $16,821.29 against the plaintiff, and that said additional income tax of $16,821.29 plus interest thereon of $2,909.39, or a total of $19,730.68, was paid by the plaintiff to the defendant, Collector of Internal Revenue, on February 14, 1934, pursuant to notice and demand made by the defendant. The defendant denies each and every allegation contained in paragraph 7 of the
57 plaintiff's complaint not herein specifically admitted.

Further answering said paragraph 7 of the plaintiff's complaint, the defendant says that the deficiency income taxes for the year 1930, in the sum of $16,821.29, together with interest thereon, were assessed against the plaintiff by the Commissioner of Internal Revenue on February 2, 1934.

8. Answering paragraph 8 of the plaintiff's complaint, the defendant admits that on March 6, 1934, the Commissioner of Internal Revenue mailed, by registered mail, to the plaintiff a notice of deficiency in income taxes of $10,326.03 for the calendar year 1931; the defendant admits that the plaintiff did not file a petition with the United States Board of Tax Appeals appealing from such deficiency asserted in said notice of deficiency; the defendant admits that subsequent to the date of said notice of said deficiency and prior to June 11, 1934, the Commissioner of Internal Revenue assessed the said additional income tax of $10,326.03 against the plaintiff, and that said additional income tax of $10,326.03 plus interest thereon of $1,359.36, or a total of $11,685.39, was paid by the plaintiff to the defendant, Collector of Internal Revenue, on June 11, 1934, pursuant to notice and demand made by

said defendant. The defendant denies each and every allegation contained in paragraph 8 of the plaintiff's complaint not herein specifically admitted. Further answering said paragraph 8 of the plaintiff's complaint, the defendant says that the deficiency income taxes for the year 1931, in the sum of $10,326.03, together with interest thereon, were assessed against the plaintiff by the Commissioner of Internal Revenue on May 25, 1934.

9. Answering paragraph 9 of the plaintiff's complaint, the defendant admits that on January 18, 1936, the plaintiff filed with the defendant, Collector of Internal
58 Revenue, claims for refund of $19,730.68, which represented the additional income tax deficiency and interest paid by the plaintiff to the defendant for the calendar year 1930, and $11,685.39, which represented the additional income tax deficiency and interest paid by the plaintiff to the defendant for the calendar year 1931, and for interest on said respective amounts from the date of their respective payments according to the provisions of law in this regard and the regulations of the Treasury established in pursuance thereof; the defendant admits that copies of the said claim for refund are attached to the plaintiff's complaint as Exhibits H and I, respectively, and the defendant says that the said claims for refund will speak for themselves as to the contentions and allegations contained in them. The defendant denies each and every allegation contained in paragraph 9 of the plaintiff's complaint not herein specifically admitted.

10. Defendant admits the allegations contained in paragraph 10 of the plaintiff's complaint.

11. Defendant denies the allegations contained in paragraph 11 of the plaintiff's complaint. Further answering said paragraph 11 of the said complaint, the defendant alleges and says that all of the $84,000 of income of said testamentary residuary trust derived during the calendar year 1930, and all of the $54,000 of income of said testamentary residuary trust derived during the calendar year 1931, was and is taxable income of the plaintiff in the calendar years 1930 and 1931, respectively, and the defendant alleges and says that the amounts of said additional income taxes plus interest, $19,730.68 and $11,685.39, were lawfully and legally assessed against the plaintiff by the Commissioner of Internal Revenue and lawfully and legally collected from the plaintiff by the defendant Collector of Internal Revenue.

59 12. Defendant is without any knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraph 12 of the plaintiff's complaint, and, therefore, the defendant denies the allegations contained in said paragraph of the said complaint.

13. Answering paragraph 13 of the plaintiff's complaint, the defendant admits that no part of the said amounts of $19,730.68 and $11,685.39, totalling $31,416.07, has been returned, refunded or repaid to the plaintiff by the defendant, or by the Commissioner of Internal Revenue, or by the Internal Revenue Department of the United States, or by any Collector of Internal Revenue of the United States, but the defendant denies that the Commissioner of Internal Revenue has illegally assessed and that the defendant, Collector of Internal Revenue, has illegally collected from the plaintiff the said amount of $31,416.07, and the defendant denies that the plaintiff is justly entitled to the said amount claimed in said complaint from the defendant, Collector of Internal Revenue, with interest thereon as claimed in said complaint. Further answering paragraph 13 of the plaintiff's complaint, the defendant alleges and says that all of the deficiency income taxes and interest thereon for the calendar years 1930 and 1931, claimed by the plaintiff to be refundable in said complaint, were legally assessed by the Commissioner of Internal Revenue and lawfully collected from the plaintiff by the defendant, Collector of Internal Revenue, and the defendant says that no portion of said taxes or the interest thereon is due and owing to the plaintiff or should be refunded to the plaintiff.

Wherefore, the defendant prays, upon consideration hereof, that the complaint of the plaintiff be dismissed and that judgment be rendered in favor of the defendant,
60 and that the defendant be allowed his costs and disbursements herein.

M. L. Igoe,
Michael L. Igoe,
United States Attorney.
David L. Bazelon,
David L. Bazelon,
Assistant United States Attorney.

State of Illinois, } ss.
County of Cook. }

David L. Bazelon, being first duly sworn according to law, says that he is an Assistant United States Attorney for the Northern District of Illinois, and that he is duly authorized to execute the foregoing answer in behalf of Carter H. Harrison, Collector of Internal Revenue for the First Collection District of Illinois, the defendant herein named; that he has read the foregoing answer and that the allegations contained therein are true as he verily believes.

David L. Bazelon.

Subscribed and sworn to before me this 8th day of July, 1938.

Anna L. Minahan,
Notary Public.

(Seal)

61 And on, to wit, the 19th day of August, 1938, came the Plaintiff by her attorneys and filed in the Clerk's office of said Court her certain Motion for entry of Judgment in words and figures following, to wit: Filed Aug. 19, 1938.

62 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—47134) * *

MOTION FOR ENTRY OF JUDGMENT AGAINST DEFENDANT.

Comes now Sara H. Schaffner, plaintiff herein, by Mayer, Meyer, Austrian & Platt, her attorneys, and moves for the entry of a judgment herein against defendant because the answer filed herein by defendant is substantially insufficient in law, and plaintiff specifies the following respects in which the said answer is substantially insufficient:

1. Said answer admits all the material facts alleged in the complaint and merely denies the right of plaintiff to recover herein as a matter of law.

2. Said answer fails to state any affirmative defenses to the complaint.

Mayer, Meyer, Austrain & Platt,
Attorneys for Plaintiff.

Filed June 19, 1939. 63 And on, to wit, the 19th day of June, 1939 there was filed in the Clerk's office of said Court a certain Opinion of Judge Wilkerson in words and figures following, to wit:

64 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—47134) * *

MEMORANDUM.

WILKERSON, *District Judge:*

The question of law presented by the pleadings is whether the beneficiary for life of the income of a testamentary trust must pay income tax on several years' income which such beneficiary had irrevocably assigned to her children prior to the years in which such income accrued.

The decision depends upon the applicability of the case of *Blair* v. *Commissioner,* 300 U. S. 5. In that case the beneficiary of a testamentary trust was to receive the net income during his life. He assigned to his children "interests" in stated amounts for each calendar year thereafter in the net income which the petitioner was then or might thereafter be entitled to receive during his life. The trustee accepted the assignments and distributed the income directly to the assignees. The Commissioner of Internal Revenue ruled that the income was taxable to the assignor. The Board of Tax Appeals held the contrary. The Circuit Court of Appeals reversed the Board. The Supreme Court held that the assignor was not taxable.

The opinion states that in such a case the tax is upon income as to which, in the general application of the revenue acts, the tax liability attaches to ownership. The court, referring to various provisions of the revenue acts, said (p. 12):

> "These provisions cannot be taken to preclude valid assignments of the beneficial interest, or to affect the duty of the trustee to distribute income to the owner of the beneficial interest whether he was such initially
65 or become such by valid assignment. The one who is to receive the income as the owner of the beneficial interest is to pay the tax. If under the law governing the trust the beneficial interest is assignable, and if it has been assigned without reservation, the assignee

> thus becomes the beneficiary and is entitled to rights and remedies accordingly. We find nothing in the revenue acts which denies him that status."

The Circuit Court of Appeals had held that the assignor had no interest in the corpus of the estate and could not dispose of the income until he received it; that the income therefore belonged to the assignor and his assignment was merely a direction to pay over to others what was due to himself. The Government contended that the assignments "dealt only with a right to receive the income" and that "no attempt was made to assign any equitable right, title or interest in the trust itself." The Supreme Court decided that this construction was a strained one; that the assignor during his life was entitled to the "net income" of the property held in trust, and that he "thus" became the owner of an equitable interest in the corpus of the property, and that by virtue of that "interest" he was entitled to enforce the trust, to have a breach of trust enjoined, and to obtain redress in case of breach; that the "interest" was "present property" alienable like any other, in the absence of a valid restraint upon alienation; that the beneficiary might thus transfer a part of his interest as well as the whole; that the assignment of the beneficial interest was not the assignment of a chose in action but of the "right, title and estate in and to the property."

In one of the cases cited by the Supreme Court, *Irwin* v. *Gavit*, 268 U. S. 161, 167, it was said:

> "* * * a gift of the income of a fund ordinarily is treated by equity as creating an interest in the fund. Apart from technicalities we can perceive no distinction relevant to the question before us between a gift of the fund for life and a gift of the income from it. The fund is appropriated to the production of the same, result, whichever from the gift takes."

In that case there was involved the income from a fund for fifteen years.

In the case at bar the Government contends that the instrument of assignment conveyed merely the income for the years in question, but did not convey the bene-
66 ficiary's "interest in the trust, and that the court in the *Blair* case did not intend to include within the term "interest" all or a portion of the "income" for one year which a beneficiary might be entitled to and which he might assign; that in the *Blair* case the beneficiary assigned a portion of his "life estate", whereas in the present case

the assignor did not transfer a "part" of her "life estate", but merely a specified number of dollars which might be earned within the period of a single year; that there was no diminution of the "interest" of this beneficiary resulting from the assignment of a specified amount of any income which might be earned by the trust in a particular year; that a true division of a "life" estate" is a "vertical" division and cannot be a "horizontal" division. In short, the Government contends that there was no "part" of the assignor's "interest" assigned and that the assignee would have no rights as against the trustee. The arguments advanced by the Government are quite plausible, but the language of the Supreme Court in the *Blair* case leaves no room for a holding in favor of the Government. The court specifically states that ownership of the net income in whole or in part carries with it an ownership of an equitable interest in the corpus, and that the assignee of that interest has the same rights as against the trustee as did the assignor.

Plaintiff may submit, on proper notice, findings and decree in accordance with this ruling.

19 June, 1939.

Entered July 7, 1939.

67 And afterwards, to wit, on the 7th day of July, A. D. 1939, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit: Judgment.

68 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—47134) * *

ORDER OF JUDGMENT.

This cause coming on to be heard on the plaintiff's Complaint, the defendant's Answer thereto, and the plaintiff's Motion for Entry of Judgment Against Defendant on the pleadings, and the court having considered said Complaint and Answer and Motion and the arguments of counsel for both parties, and the court being fully advised in the premises Finds that it has jurisdiction of the parties and subject matter of this suit, and that none of the material allegations contained in the plaintiff's Complaint have been

denied by the defendant and that all of such material allegations have been admitted by defendant and that said Answer merely denies the right of plaintiff to recover herein as a matter of law, and that the Complaint states causes of action in favor of plaintiff and against the defendant, and that the defendant's Answer fails to state any affirmative or other adequate defense to said causes of action, and that plaintiff is entitled to recover from defendant as alleged and prayed in said Complaint.

Now Therefore It Is Hereby Adjudged and Ordered by the court that the plaintiff's Motion for Entry of Judgment against the defendant be granted and sustained and that judgment be, and is hereby, entered of record against Carter H. Harrison, Collector of Internal Revenue for the First District of Illinois, in favor of the plaintiff for, and that the plaintiff recover from the defendant, the sum of $31,416.07, with interest at the legal rate of six per cent per annum from February 14, 1934 on $19,730.68 of said sum, and from June 11, 1934 on $11,685.39 of said sum, in each case to the date provided by Section 117(b) of the Judicial Code, as amended by Section 808 of the Revenue Act of 1936, together with costs of this suit.

Enter:

James H. Wilkerson,
District Judge.

July 7th, 1939.

69 And afterwards, to wit, on the 7th day of July, A. D. 1939, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit: Certificate of Probable Cause.

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Ju
193

70 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—47134) * *

CERTIFICATE OF PROBABLE CAUSE.

It Is Certified that the Collector of Internal Revenue for the First District of Illinois, the defendant herein, acted under the direction of the Secretary of the United States Treasury in the collection of the tax assessed against the plaintiff herein, and that the said Collector

had probable cause for making the collection of the said tax.

James H. Wilkerson,
Judge of the District Court of the United States for the Northern District of Illinois, Eastern Division.

Dated July 1, 1939.

Filed Oct. 5, 1939. 71 And on, to wit, the 5th day of October, 1939, came the Defendant by his attorney and filed in the Clerk's office of said Court his certain Notice of Appeal in words and figures following, to wit:

72 IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division.

Sara H. Schaffner,
Plaintiff,

vs.

Carter H. Harrison, individually and as Collector of Internal Revenue for the First Collection District of Illinois,
Defendant.

No. 47134.

NOTICE OF APPEAL.

Notice is hereby given that Carter H. Harrison, defendant above named, hereby appeals to the Circuit Court of Appeals for the Seventh Circuit from the final judgment entered in this action on July 7, 1939.

William J. Campbell,
William J. Campbell,
United States Attorney for the Northern District of Illinois, Eastern Division, Attorney for Carter H. Harrison, Appellant.

73 And on, to wit, the 17th day of October, 1939, came the Defendant-Appellant by his attorney and filed in the Clerk's office of said Court his certain Designation of Contents of Record on Appeal in words and figures following, to wit: Filed Oct. 17, 1939.

74 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—47134)

APPELLANT'S DESIGNATION OF CONTENTS OF RECORD ON APPEAL.

To the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division.

Carter H. Harrison, Collector of Internal Revenue for the First District of Illinois, pursuant to notice of appeal filed by him in the above-entitled cause on October 5, 1939, and pursuant to the Federal Rules of Civil Procedure, hereby designates the following as the portions of the record, proceedings and evidence in the above entitled cause to be contained in the record on said appeal:

	Date of Filing	Description of Papers
	1938	
1.	May 7, 1	Complaint
2.	July 8	Answer
3.	August 19	Motion for Entry of Judgment
	1939	
4.	July 7	Order of Judgment
5.	July 7	Certificate of Probable Cause
6.	October 5	Notice of Appeal
7.	October 16	Designation of Contents of Record on Appeal.

75 Dated at Chicago, Illinois, this 13th day of October, A. D. 1939.

William J. Campbell,
William J. Campbell,
United States Attorney.

Received a copy of the above and foregoing Designation of Contents of Record on Appeal, this 13th day of October, A. D. 1939.

Mayer, Meyer, Austrian & Platt,
Mayer, Meyer, Austrian & Platt,
231 S. LaSalle Street,
Attorneys for Plaintiff.

Filed Oct. 17, 1939. 76 And on, to wit, the 17th day of October, 1939, came the Plaintiff-Appellee by her attorneys and filed in the Clerk's office of said Court her certain Designation of Additional Portion of Record on Appeal in words and figures following, to wit:

77 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—47134) * *

APPELLEE'S DESIGNATION OF ADDITIONAL PORTION OF RECORD ON APPEAL.

To the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division:

Sara H. Schaffner, plaintiff and appellee herein, hereby designates the Memorandum Opinion of Honorable James H. Wilkerson, District Judge (filed herein on or about June 19, 1939) as an additional portion of the record in the above entitled cause to be contained in the record on said appeal.

Dated at Chicago, Illinois, this 17th day of October, A. D. 1939.

Mayer, Meyer, Austrian & Platt,
Attorneys for Sara H. Schaffner,
Plaintiff and Appellee herein.
231 South LaSalle Street,
Chicago, Ill.

Received a Copy of the above and foregoing Appellee's Designation of Additional Portion of Record on Appeal, this 17th day of October, 1939.

W. J. Campbell, Blahm,
William J. Campbell,
United States Attorney.

Endorsed: No. 47134 Filed October 17, 1939 Hoyt King, Clerk.

78 Northern District of Illinois, } ss:
Eastern Division. }

I, Hoyt King, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Praecipe filed in this Court in the cause entitled Sara H. Schaffner *vs.* Carter H. Harrison, Collector of Internal Revenue for the First District of Illinois as the same appear from the original records and files thereof now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 14th day of November, A. D. 1939.

Hoyt King,
Clerk.

(Seal)

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UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages numbered from 1 to 67, inclusive, contain a true copy of the printed record, printed under my supervision and filed on the twenty-seventh day of December, 1939, upon which the following entitled cause was heard and determined: Cause No. 7139, Sara H. Schaffner, plaintiff-appellee, vs. Carter H. Harrison, Collector, etc., defendant-appellant, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this Twentieth day of August, A. D. 1940.

[SEAL]

s/ KENNETH J. CARRICK,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the third day of October, in the year of our Lord one thousand nine hundred and thirty-nine, and of our Independence the one hundred and sixty-fourth.

7139

SARA H. SCHAFFNER, PLAINTIFF-APPELLEE

vs.

CARTER H. HARRISON, COLLECTOR, ETC., DEFENDANT-APPELLANT

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

And, to-wit: On the following proceedings were had and entered of record, to-wit:

Friday, May 17, 1940

Court met pursuant to adjournment

Before: Hon. EVAN A. EVANS, Circuit Judge; Hon. J. EARL MAJOR, Circuit Judge; Hon. WALTER C. LINDLEY, District Judge.

7139

SARA H. SCHAFFNER, PLAINTIFF-APPELLEE

vs.

CARTER H. HARRISON, COLLECTOR, ETC., DEFENDANT-APPELLANT

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

Now this day come the parties by their counsel and this cause comes on to be heard on the transcript of the record and briefs of

counsel, and on oral argument by Mr. Edward First, counsel for appellant, and by Mr. Herbert A. Friedlich, counsel for appellee, and the Court having heard the same takes this matter under advisement.

And afterwards, to-wit: On the seventeenth day of June, 1940, there was filed in the office of the Clerk of this Court, the opinion of the Court, which said opinion is in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the Seventh Circuit

No. 7139. October Term, 1939, April Session, 1940

SARA H. SCHAFFNER, PLAINTIFF-APPELLEE

vs.

CARTER H. HARRISON, COLLECTOR OF INTERNAL REVENUE FOR THE FIRST DISTRICT OF ILLINOIS, DEFENDANT-APPELLANT

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

June 17, 1940

Before EVANS and MAJOR, Circuit Judges, and LINDLEY, District Judge.

LINDLEY, District Judge. Defendant appeals from a judgment entered in the District Court for the recovery of alleged overpayment of income taxes for the year 1930, in the sum of $19,730.68, and for 1931, $11,685.39 and interest, paid to defendant, Collector of Internal Revenue, by plaintiff, the taxpayer. Judgment was entered upon the pleadings, it appearing that there was no controversy as to the correctness of facts therein averred.

Joseph Schaffner, a resident of Chicago, died testate, June 20, 1918. By the Sixteenth section of his will, duly admitted to probate, he created a residuary trust, designating his wife the taxpayer, beneficiary of all the income therefrom during her lifetime, and directing it to be paid to her currently.

On December 23, 1929, the taxpayer executed irrevocable assignments of $84,000 of the net income of the trust for the year 1930 to three children, and on November 14, 1930, similar assignments of $54,000 of the net income for the year 1931, except that the latter assignments were made in part to the surviving husband of one of her daughters, who had in the interim, died. Each of the instruments transferred "such portion of the income as shall equal the sum of $_____ from and out of the net income that may be derived during the year 1930 from the trust estate created by the Sixteenth section of the last will and testament of Joseph Schaffner." Each recited that the assignee should be entitled to receive and collect the sum assigned and that the trustees were directed to pay it to the trans-

feree in installments during the year. It was further provided that the trustees might pay the sum "out of whatever specific income derived as aforesaid from said trust estate during the year they may elect or appropriate for that purpose," and their selection and allocation were made conclusive upon the assignees. The transfers were made "absolute and irrevocable" and "wholly free from my (the assignor's) individual control and direction." The moneys to be paid to each assignee were, by the instruments, to be "deemed income in her hands and she shall be regarded as substituted pro tanto as beneficiary for the year (to the extent of the sum assigned) in my place." The sums assigned were paid by the trustees to the assignees. The taxpayer did not account for any of the same in her tax returns. The commissioner held the assigned amounts taxable income of the taxpayer and assessed against her deficiency taxes for the years 1930 and 1931, which were paid and for return of which judgment was entered in this suit.

The District Court relied upon Blair v. Commissioner, 300 U. S. 5. There the taxpayer, who was beneficiary for life of a testamentary trust, assigned to his daughter an interest amounting to $6,000 for the remainder of the calendar year and to $9,000 in each year thereafter out of the income to which he was entitled during his life under the trust. He made like assignments to another daughter and a son, and in later years, by similar instruments, he assigned to his children additional interests and to another son, another specified interest in the net income. The court held the assignments valid and assignees taxable upon the income, not the assignor.

The Government there relied upon Lucas v. Earl, 281 U. S. 111; Burnet v. Leininger, 285 U. S. 136. The court distinguished these from the facts of the Blair case, saying that Lucas v. Earl, was decided upon the taxing act and holding that where an attorney had assigned his earned income to his wife, the tax should be assessed against him upon his earnings. The Burnet case had to do with the assignment of an interest in a partnership income earned by the partner. This, the court held, under the statute, resulted in earnings of a partner taxable to him.

The court, after discussing the pertinent statutory provisions said: "These provisions cannot be taken to preclude valid assignments of the beneficial interest, or to affect the duty of the trustee to distribute income to the owner of the beneficial interest, whether he was such initially or becomes such by valid assignment. The one who is to receive the income as the owner of the beneficial interest is to pay the tax. If under the law governing the trust the beneficial interest is assignable, and if it has been assigned without reservation, the assignee thus becomes the beneficiary and is entitled to rights and remedies accordingly. * * * The will creating the trust entitled the petitioner during his life to the net income of the property held in trust. He thus became the owner of an equitable interest in the corpus of the property. Brown v. Fletcher, 235 U. S. 589, 598, 599;

Irwin v. Gavit, 268 U. S. 161, 167, 168; Senior v. Braden, 295 U. S. 422, 432, 433; Merchants' Loan & Trust Co. v. Patterson, 308 Ill. 519, 530, 139 N. E. 912. By virtue of that interest he was entitled to enforce the trust, to have a breach of trust enjoined and to obtain redress in case of breach. The interest was present property alienable like any other, in the absence of a valid restraint upon alienation. Commissioner v. Field, 42 Fed. (2d) 820, 822; Shanley v. Bowers, 81 Fed. (2d) 13, 15. The beneficiary may thus transfer a part of his interest as well as the whole. See Restatement of the Law of Trusts, par. 130, 132, et seq. The assignment of the beneficial interest is not the assignment of a chose in action but of the 'right, title and estate in and to property.'"

There as here the Government argued that, under the Revenue Act of 1928, the assignment covered only the right to receive income and did not amount to an assignment of any equitable right, title or interest in the trust itself. The court said in respect to this:

"This construction seems to us to be a strained one. We think it apparent that the conveyancer was not seeking to limit the assignment so as to make it anything less than a complete transfer of the specified interest of the petitioner as the life beneficiary of the trust, but that with ample caution he was using words to effect such a transfer."

The only difference between the Blair case and the one presented to us is that in the former, the assignment was of a portion of the income for the remainder of the life estate of the assignor, while in the latter a part of the trust income in a specified year only was assigned. In each case, however, the assignment was of merely a portion of the trust income. Such assignment, in the language of the Supreme Court, made the assignee "the owner of an equitable interest in the corpus of the property," entitled to enforce the trust. The interest transferred was "present property alienable like any other." If an irrevocable assignment of a part of the income from an irrevocable existing trust for an uncertain period such as the life of the assignor transfers a property interest in the corpus, we see no reason why the assignment of a certain specified portion of such income for a specific period, one or two years, does not work the same result. If one is an interest in the corpus so likewise must be the other. The one may exist for thirty days or twenty years. The other will exist definitely for a year. Any difference is one of quantum, not of quality. There is no legal difference in the subject matter of what is assigned in the two instances. In each the assigned portion is part and parcel of the whole, and, under the language of the Supreme Court, an alienable equitable property interest.

The Government relies upon the recent case of Helvering v. Clifford, — U. S. —, February 26, 1940. There the complaining taxpayer declared himself a trustee of certain securities which he himself owned. He provided that he should hold the securities for five years for the benefit of his wife. Upon termination of that period,

the corpus of the estate was to revert to the respondent himself and only undistributed net income was to be the property of his wife. During the continuation of the trust, the respondent was to pay to his wife such of the net income as "he in his absolute discretion" might determine. He retained full power to exercise all voting powers upon shares of stock, to sell, exchange, mortgage or pledge any of the securities, either principal or income, to invest and reinvest without restriction, to collect all income, and to compromise claims held by him as trustee. One clause expressly protected him from all losses except those occasioned by his "own wilful and deliberate" breach of duty. Neither principal nor income was liable for the debts of the wife. The wife could not transfer, encumber, assign, or anticipate any interest in the trust or income therefrom prior to actual payment to her.

In this situation, the Board of Tax Appeals concluded that respondent continued to be the owner for taxing purposes under section 22 (a) of the statute and levied a tax against him.

In the Supreme Court, Mr. Justice Douglas, speaking for the majority, said:

"In this case we cannot conclude as a matter of law that respondent ceased to be the owner of the corpus after the trust was created. Rather, the short duration of the trust, the fact that the wife was the beneficiary, and the retention of control over the corpus by respondent all lead irresistibly to the conclusion that respondent continued to be the owner for purposes of Sec. 22 (a)."

Thus the court concluded that upon the facts as found by the Board, it could not say as a matter of law that the ultimate finding was erroneous. The issue, it said, whether the grantor of a trust may still be treated under the statutory scheme as owner of the corpus, must depend upon the specific facts and circumstances.

The court found decisive the control retained by the grantor. He had created the trust estate out of his own property. He retained title to the assets, absolute dominion over the same and absolute discretion in management thereof. Said Mr. Justice Douglas:

"So far as his dominion and control were concerned it seems clear that the trust did not effect any substantial change. In substance his control over the corpus was in all essential respects the same after the trust was created, as before. The wide powers which he retained included for all practical purposes most of the control which he as an individual would have. * * * It is hard to imagine that respondent felt himself the poorer after this trust had been executed or, if he did, that it had any rational foundation in fact. For as a result of the terms of the trust and the intimacy of the familiar relationship respondent retained the substance of full enjoyment of all the rights which previously he had in the property. That might not be true if only strictly legal rights were considered. But when the benefits flowing to him indirectly through the wife are added to the legal rights he retained, the aggregate may be said to be a fair

equivalent of what he previously had. * * * Thus where, as in this case, the benefits directly or indirectly retained blend so imperceptibly with the normal concepts of full ownership, we cannot say that the triers of fact committed reversible error when they found that the husband was the owner of the corpus for the purposes of Sec. 22 (a). * * * The bundle of rights which he retained was so substantial that respondent cannot be heard to complain that he is the 'victim of despotic power when for the purpose of taxation he is treated as owner altogether.' See Dupont v. Commissioner, 289 U. S. 685, 689."

Thus the full extent of the decision, apparently, is that in view of the grantor's retained control, the court felt that it was not justified in concluding that the triers of the facts committed reversible error when they found that the husband was the owner of the corpus for the purpose of taxation.

The distinction between the Blair and the Clifford cases seems to us obvious, and the same distinction between the case at bar and the Clifford case evident. In the Blair case and in the present one, the assignor was the owner of an equitable interest a part of which he assigned irrevocably, thus passing the property interest to the assignee, the assignor retaining no control or authority over what was assigned. In the Clifford case the all-decisive element was the fact that the grantor creating the trust retained control over its corpus, management thereof, absolute discretion in supervising and operating it, and, at the end of five years, again became the absolute owner of the corpus. Here the trier of facts found that control was not retained by the assignor. In the Clifford case the trier of facts found the contrary. The Supreme Court did not feel justified in disturbing the findings in that case. There is no more reason why, with substantial evidence supporting the conclusions of the trier of facts in this case, we should interfere.

The judgment of the District Court is affirmed.

A true copy.

Teste:

_____,

Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

And on the same day, to-wit: On the seventeenth day of June, 1940, the following further proceedings were had and entered of record, to-wit:

Monday, June 17, 1940

Court met pursuant to adjournment

Before: Hon. EVAN A. EVANS, Circuit Judge; Hon. J. EARL MAJOR, Circuit Judge; Hon. WALTER C. LINDLEY, District Judge.

7139

SARA H. SCHAFFNER, PLAINTIFF-APPELLEE

vs.

CARTER H. HARRISON, COLLECTOR, ETC., DEFENDANT-APPELLANT

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof: It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause, be, and the same is hereby affirmed.

United States Circuit Court of Appeals for the Seventh Circuit

I, Kenenth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten and printed pages numbered from 1 to 10, inclusive, contain a true copy of the proceedings had and papers filed (excepting appearances of counsel and briefs of counsel) in the following entitled cause: Cause No. 7139, Sara H. Schaffner, plaintiff-appellee, vs. Carter H. Harrison, Collector, etc., defendant-appellant, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this twentieth day of August, A. D. 1940.

[SEAL]

s/ KENNETH J. CARRICK,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

U. S. GOVERNMENT PRINTING OFFICE: 1940

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No. 437

In the Supreme Court of the United States

OCTOBER TERM, 1940

CARTER H. HARRISON, COLLECTOR OF INTERNAL REVENUE FOR THE FIRST DISTRICT OF ILLINOIS, PETITIONER

v.

SARAH H. SCHAFTNER

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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INDEX

CITATIONS

260160—40

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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. ——

CARTER H. HARRISON, COLLECTOR OF INTERNAL REVENUE FOR THE FIRST DISTRICT OF ILLINOIS, PETITIONER

v.

SARAH H. SCHAFFNER

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Solicitor General, on behalf of Carter H. Harrison, Collector of Internal Revenue, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Seventh Circuit entered in the above-entitled cause on June 17, 1940.

OPINIONS BELOW

The memorandum opinion of the District Court (R. 60) is not officially reported. The opinion of the Circuit Court of Appeals (R. 69) is reported in 113 F. (2d) 449.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on June 17, 1940 (R. 75). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

A life beneficiary of a residuary trust, in November and December, assigned to her children and son-in-law specified amounts in dollars of the income that might be derived from the trust during the ensuing year. The question is whether the assignor, by executing such assignments, was thereby relieved of taxation upon the trust income during the ensuing year.

STATUTE INVOLVED

Revenue Act of 1928, c. 852, 45 Stat. 791:

> SEC. 22. GROSS INCOME.
>
> (a) *General definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on

for gain or profit, or gains or profits and income derived from any source whatever.

* * * * *

SEC. 161. IMPOSITION OF TAX.

(a) *Application of tax.*—The taxes imposed by this title upon individuals shall apply to the income of estates or of any kind of property held in trust, * * *

* * * * *

SEC. 162. NET INCOME.

The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except that—

* * * * *

(b) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries, and the amount of the income collected by a guardian of an infant which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. * * *

STATEMENT

The judgment of the District Court in this case was entered (R. 62) pursuant to the motion of the taxpayer (R. 59) for judgment on the pleadings. The pertinent facts, as established by the complaint

(R. 2) and answer (R. 53), may be summarized as follows:

In 1918 the taxpayer, Sara H. Schaffner, became entitled to the income for life of a residuary trust established by the will of her husband (R. 3, 18–24). On December 23, 1929, she irrevocably assigned in writing to her three children $84,000 of the net income that might be derived from the trust during the year 1930. Of the net income thus assigned, $36,000 was for one daughter; $30,000 for another daughter; and $18,000 for a son. (R. 3–4, 39–43, 54–55.)

On November 14, 1930, the taxpayer again executed irrevocable assignments of the net income of the residuary trust. These assignments, totalling $54,000, covered income that might be derived from the trust during the year 1931 only. Her daughter, her son, and the husband of a deceased daughter each received $18,000. (R. 4, 43–48, 55.)

The portions of the trust income thus assigned were paid by the trustee directly to the assignees (R. 4, 55).

The taxpayer filed income-tax returns for the years 1930 and 1931 (R. 3, 54) but did not include in either any portion of the trust income assigned by her (R. 4, 55–56).

The Commissioner of Internal Revenue held all of the assigned income to be taxable income to the taxpayer and, therefore, assessed against her the deficiency income taxes for the years 1930 and 1931.

These additional taxes were paid by the taxpayer. (R. 5–6, 56–57.)

The District Court entered judgment that the taxpayer was entitled to a refund of the deficiency taxes so paid (R. 62); the Circuit Court of Appeals affirmed the judgment. (R. 75).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the income of the residuary trust which the taxpayer assigned should not have been included in her gross income.

2. In failing to hold that the income of the residuary trust which the taxpayer assigned was properly included in her gross income.

3. In affirming the judgment of the District Court.

REASONS FOR GRANTING THE WRIT

1. The decision of the Seventh Circuit in this case conflicts in principle with *Helvering* v. *Clifford,* 309 U. S. 331.

There, a husband, without reserving a power of revocation, declared himself trustee of certain securities to pay the income therefrom to his wife for five years. At termination, the corpus was to revert to him, while all accrued income was to go to his wife. He paid a gift tax upon the creation of the trust, and his wife reported in her separate returns all of the trust income distributed to her. This Court nevertheless held that the husband was taxable with respect to such income under Section

22 (a), notwithstanding that it had been distributed to another who was legally entitled to it. The Court regarded as the "basic issue" whether or not "the grantor after the trust has been established may still be treated, under this statutory scheme, as the owner of the corpus." P. 334. The considerations which brought about that result were summarized (p. 335) as being:

> the short duration of the trust, the fact that the wife was the beneficiary, and the retention of control over the corpus * * *

In answer to the argument that the control retained by the taxpayer was "the type of dominion exercised by any trustee," the Court stated (pp. 335–336) that "the answer is simple. We have at best a temporary reallocation of income within an intimate family group. * * * For where the head of the household has income in excess of normal needs, it may well make but little difference to him (except income-tax-wise) where portions of that income are routed—so long as it stays in the family group."

In the case at bar, the taxpayer parted with merely a portion of the trust income for a twelve-month period only. She retained all other rights, including the rights to receive and control the disposition of the entire income in other years and to hold the trustee accountable for his administration of the corpus. The "short duration" of the trust, commented upon in the *Clifford* case, is more than

matched in this case. The recipients of her generosity were equally members of the family group.

The fact that the taxpayer was a life beneficiary under the trust and not the trustee, scarcely distinguishes this situation from the *Clifford* case. On the contrary, the fact that the taxpayer's original property here was an equitable life estate as opposed to ownership of the fee in the *Clifford* case, makes it clear that the "all-important factor" in this case is, not the power to manage the corpus, but rather the power to designate the recipients of the yearly income. The assignment was merely a substitute for an expenditure that the taxpayer would ordinarily have made out of her own income; she retained all the rights of dominion that, in the absence of an assignment, were important to her.

The decision of this Court in *Blair* v. *Commissioner*, 300 U. S. 5, is consistent with our position. There, the life beneficiary of a trust irrevocably assigned a substantial portion of *his entire equitable life estate*. Such circumstances afford basis for a holding that the assignor there did not retain enough of those perquisites of ownership which this Court in the *Clifford* case has held to be determinative of taxability. The situation here is materially different. Mrs. Schaffner's *equitable life estate* in the trust property was not assigned to anyone, in whole or in part; instead, she carved out of that estate a single year's income only.

In any event, we submit, the decision in *Blair* v. *Commissioner* should be no more controlling here than it was in the *Clifford* case.

2. The question raised in this case is cognate to the questions now before this Court in *Helvering* v. *Horst*, No. 27, 1940 Term, and *Helvering* v. *Eubank*, No. 205, 1940 Term. A decision favorable to the Government in those cases would probably require a reversal of the judgment in the case at hand. In the *Horst* case, especially, the situation resembles the one at bar. There, the taxpayer, who owned certain coupon bonds, detached negotiable interest coupons, prior to their maturity, and transferred them by manual delivery to his son as a gift. By so doing, it is true, the taxpayer gave up his right to the income for a short period of time. But in that case, as well as in the instant case, the taxpayer retained all his other rights, including his original right of control over the corpus and his right to receive and control the disposition of the entire income accruing during other years.

3. The decision of the Seventh Circuit, moreover, fails to apply the rules laid down by this Court in *Lucas* v. *Earl*, 281 U. S. 111, and in *Burnet* v. *Leininger*, 285 U. S. 136, governing the taxability of an assignor of future income.

CONCLUSION

It is therefore respectfully submitted that, for the foregoing reasons, this petition for a writ of certiorari should be granted.

FRANCIS BIDDLE,
Solicitor General.

SEPTEMBER 1940.

U. S. GOVERNMENT PRINTING OFFICE: 1940

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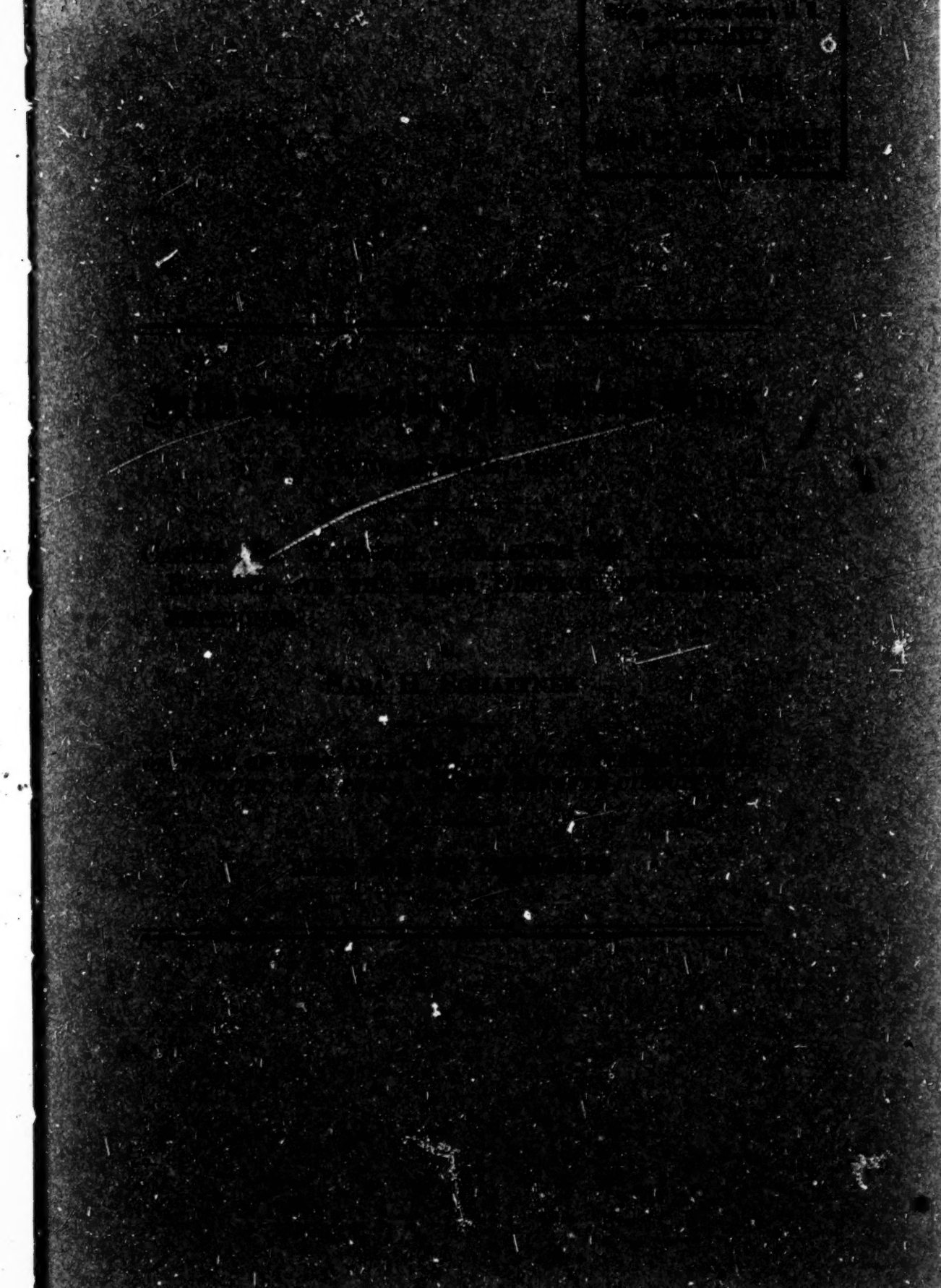

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INDEX

CITATIONS

286651—41

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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 437

CARTER H. HARRISON, COLLECTOR OF INTERNAL REVENUE FOR THE FIRST DISTRICT OF ILLINOIS, PETITIONER

v.

SARA H. SCHAFFNER

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The memorandum opinion of the District Court (R. 60) is not officially reported. The opinion of the Circuit Court of Appeals (R. 69) is reported in 113 F. (2d) 449.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on June 17, 1940 (R. 75). The petition for a writ of certiorari was filed September 14, 1940, and was granted November 12, 1940. The jurisdiction of this Court rests upon Section

240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

A life beneficiary of a residuary trust, in November and December, assigned to her children and son-in-law specified amounts in dollars of the income that might be derived from the trust during the ensuing year. The question is whether the assignor, by executing such assignments, was thereby relieved of tax upon such income.

STATUTE INVOLVED

Revenue Act of 1928, c. 852, 45 Stat. 791;

SEC. 22. GROSS INCOME.

(a) *General definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever.

* * * * *

SEC. 161. IMPOSITION OF TAX.

(a) *Application of tax.*—The taxes imposed by this title upon individuals shall

apply to the income of estates or of any kind of property held in trust, * * *

* * * * *

SEC. 162. NET INCOME.

The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except that—

* * * * *

(b) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries, and the amount of the income collected by a guardian of infant which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. * * *

STATEMENT

The judgment of the District Court was entered (R. 62) pursuant to the taxpayer's motion (R. 59) for judgment on the pleadings. The pertinent facts, as established by the complaint (R. 2) and answer (R. 53), may be summarized as follows:

In 1918 the taxpayer, Sara H. Schaffner, became entitled to the income for life of a residuary trust established by the will of her husband (R. 3, 18–24, 38). On December 23, 1929, she irrevocably as-

signed in writing to her three children $84,000 of the net income that might be derived from the trust during the year 1930. Of the net income thus assigned, $36,000 was for one daughter; $30,000 for another daughter; and $18,000 for a son. (R. 3–4, 39–43, 54–55.)

On November 14, 1930, the taxpayer again executed irrevocable assignments of the net income of the residuary trust. These assignments, totalling $54,000, covered income that might be derived from the trust during the year 1931 only. Her daughter, her son, and the husband of a deceased daughter each received $18,000 (R. 4, 43–48, 55.)

The portions of the trust income thus assigned were paid by the trustee directly to the assignees (R. 4, 55.)

The taxpayer filed income-tax returns for the years 1930 and 1931 (R. 3, 54) but did not include in either any portion of the trust income thus assigned (R. 4, 55–56).

The Commissioner of Internal Revenue ruled that all of the assigned income was taxable to the assignor, and assessed a deficiency against her for the years 1930 and 1931. She paid the additional taxes (R. 5–6, 56–57), and brought this suit for refund.

The District Court held that the taxpayer was entitled to a refund (R. 62); the Circuit Court of Appeals affirmed (R. 75).

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the income of the residuary trust which the taxpayer assigned should not have been included in her gross income.

2. In failing to hold that the income of the residuary trust which the taxpayer assigned was properly included in her gross income.

3. In affirming the judgment of the District Court.

SUMMARY OF ARGUMENT

This case is ruled by *Helvering* v. *Horst* and *Helvering* v. *Eubank,* recently decided by this Court. Without relinquishing her life estate, the taxpayer simply deflected income therefrom for a short period to members of her family. The *Horst* and *Eubank* cases, as well as other decisions of this Court, make it clear that such an assignment could not relieve the assignor of tax liability.

Blair v. *Commissioner,* 300 U. S. 5, is not opposed. There the owner of a life estate made an assignment of income therefrom to be paid annually during his entire life. The Court treated such an assignment as transferring not only income to the assignee but also a proportionate share of the assignor's entire life estate. If the *Blair* case be regarded as standing for more than this, it would be inconsistent with the other assignment of income cases. Thus, if the taxpayer in the *Horst* case had transferred the bonds in trust for himself and then assigned one year's

income to his son, it seems clear that the *Blair* case would not have required a different result. There is no magic in the trust device, the crucial issue being whether the taxpayer has parted with the underlying interest out of which the income flowed. The taxpayer here, unlike the assignor in the *Blair* case, did not part with her underlying property interest, i. e., her life estate, and therefore continued to remain liable with respect to the trust income.

ARGUMENT

THE LIFE BENEFICIARY REMAINED TAXABLE WITH RESPECT TO THE ASSIGNED INCOME

1. The taxpayer is a life beneficiary of a trust. Without in any way relinquishing her life interest she carved out a portion of one year's income late in December 1929, and directed the trustees to pay the amount so designated to members of her family during the following year. The ritual was repeated in November 1930 with respect to the 1931 income of the trust. We submit that such assignments could not effectively relieve her of tax.

Like the owner of the coupon bonds in *Helvering* v. *Horst*, No. 27, present Term, the taxpayer simply reallocated income for a relatively short period within the family group without relinquishing the underlying property from which the income was separated. In the *Horst* case the property consisted of bonds; here the property consists of a life estate in a trust. We believe that there are no es-

sential differences between the two cases, and submit that the decision in the *Horst* case governs.

The rule applied in the *Horst* case and its companion case, *Helvering* v. *Eubank,* No. 205, followed established principles. *Lucas* v. *Earl,* 281 U. S. 111; *Burnet* v. *Leininger,* 285 U. S. 136; *Helvering* v. *Clifford,* 309 U. S. 331; see *Reinecke* v. *Smith,* 289 U. S. 172, 177; cf. *Corliss* v. *Bowers,* 281 U. S. 376; *Du Pont* v. *Commissioner,* 289 U. S. 685; *Burnet* v. *Wells,* 289 U. S. 670. And the facts in the instant case make the application of those principles particularly appropriate here. In every real sense the taxpayer exercised control over the flow of the income in question. She waited until the end of the year, when she could presumably budget her affairs with reasonable accuracy for the coming year and then directed the payment of a specified amount out of one year's income to members of her family.

2. The court below herein, like the lower court in the *Horst* case, relied heavily upon *Blair* v. *Commissioner,* 300 U. S. 5.[1] We believe that that case is consistent with our position, and should be no more controlling here than it was in the *Horst* case.

---

[1] The court below concluded that no legal difference existed between the instant case and *Blair* v. *Commissioner*, and its decision is in accord with two decisions of the Board of Tax Appeals in essentially similar cases. *Booth* v. *Commissioner*, 36 B. T. A. 141, affirmed without opinion, 103 F. (2d) 1008 (C. C. A. 6th); *Whitcomb* v. *Commissioner*, 37 B. T. A. 806, affirmed without opinion, 103 F. (2d) 1009 (C. C. A. 6th).

In the *Blair* case the life beneficiary of a testamentary trust assigned *for the duration of his life* a specified portion of the income to which he was entitled, and this Court held that he was not taxable on the income thus paid to the assignee. But that decision proceeded upon the theory that the donor had disposed, not merely of his right to income, but also of his entire proportionate life interest. Indeed, the Court referred to the language of the assignment, and stated (p. 13):

> We think it apparent that the conveyancer was not seeking to limit the assignment so as to make it anything less than a complete transfer of the specified interest of the petitioner as the life beneficiary of the trust, but that with ample caution he was using words to effect such a transfer. * * *

The *Blair* case thus constitutes an exception to the general rule: normally, the assignor may not relieve himself of tax by deflecting his income, but where he is merely a life beneficiary and strips himself of his entire property interest in the trust, he may avoid tax upon the income flowing from that property which is thereafter paid to the donee. Such, we believe, was the interpretation of the *Blair* case in the prevailing opinion in the *Horst* case, where it was said:

> In the circumstances of that case the right to income from the trust property was thought to be so identified with the equitable ownership of the property from which alone the beneficiary derived his right to receive

> the income and his power to command disposition of it that a gift of the income by the beneficiary became effective only as a gift of his ownership of the property producing it. Since the gift was deemed to be a gift of the property the income from it was held to be the income of the owner of the property, who was the donee, not the donor, * * *

We believe that the foregoing language must have been intended to refer to the property interest of the equitable life tenant all of which had been given away. It certainly could not have been meant to suggest that every irrevocable assignment of trust income effectively frees the assignor of tax liability on the theory that trust income is inextricably bound up with the underlying property. For, in that view, it would simply have been necessary for Mr. Horst to transfer his bonds in trust for himself and then to assign to his son the trust income about to be realized. We submit that the result in the *Horst* case rests upon no such metaphysical distinction, and whether the income stems from a trust or whether it springs directly from legal ownership of property, the tax thereon may not be avoided by an anticipatory assignment unless the owner has parted with the underlying interest out of which the income flows. The underlying interest in the *Horst* case was a bond; here it is a life estate. In neither situation did the assignor part with that underlying interest; in each case the assignor simply released income for a brief period. In the *Blair* case, on

the other hand, the taxpayer gave up a portion of his entire life interest, and to that extent succeeded in avoiding tax liability.

In the instant case the taxpayer has not disposed of her life interest, and there is therefore no occasion for invoking the *Blair* case. Indeed the Court in the *Horst* case analogized the *Blair* case to an assignment of rent from a lease "after the leasehold * * * had been given away", the plain inference being that if the owner of the leasehold had not given it away he would remain taxable upon any rent that he had assigned. Similarly here, the owner of a life estate like the owner of the leasehold has simply parted with a limited amount of future income, and should not thereby be relieved of tax thereon.

CONCLUSION

The judgment of the court below should be reversed.

Respectfully submitted.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 437

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Petitioner,

vs.

SARA H. SCHAFFNER,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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BLANK PAGE

INDEX.

CITATIONS.

BLANK PAGE

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vs.

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Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

It is respectfully submitted that this Court should deny Petitioner's petition for a Writ of Certiorari herein for the following reasons:

I.

IN EFFECT, THE PETITION ASKS THIS COURT TO OVERRULE BLAIR vs. COMMISSIONER OF INTERNAL REVENUE, 300 U. S. 5.

The *Blair* case was decided by a unanimous Court.

The instant case cannot be distinguished from the *Blair* case.

In the *Blair* case, the life beneficiary of a testamentary trust assigned to his daughter interests (amounting to $6,000 for the remainder of the then current calendar

year and amounting to $9,000 in each calendar year thereafter) in the net income which he was entitled to receive during his life under the provisions of the trust. He made similar assignments to another daughter and to two sons.[1] There was no evidence (and could be no evidence until the assignor-life tenant died and the total amount of income from the trust became known) as to whether the four Blair assignments collectively covered more or less than the entire equitable life estate. This Court held in the *Blair* case that the life tenant was "the owner of an equitable interest in the corpus" of the trust property, that such interest could be assigned *in whole or in part,* and that the assignments in question were not assignments of choses in action but of "right, title and estate" in and to the trust property. *Blair* v. *Commissioner,* 300 U. S. 5, 13-14.

In the instant case, Respondent, prior to the close of each of two calendar years, assigned to her three children and one son-in-law specified portions of income to be derived from the testamentary trust, under which she was the life tenant, during the respective next ensuing year.[2]

---

1. Pertinent excerpts from typical assignment in the *Blair* case: The assignor "does hereby sell, assign, transfer * * * an interest amounting to * * * $6,000 for the remainder of the current calendar year, and * * * $9,000 in each calendar year thereafter in the net income which * * *" assignor is entitled to receive under the trust. (The assignments in the *Blair* case are set out in the footnote at p. 658 of 83 F. (2d).)

2. Pertinent excerpts from typical assignment *in case at bar:* Assignor has "sold, assigned, set over and transferred, and by these presents do [es] sell, assign, set-over and transfer * * * such portion of the income as shall equal the sum of Thirty-Six-Thousand Dollars ($36,000) from and out of the net income that may be derived during the year 1930 from the trust estate * * *.

"The assignment hereby made is absolute and irrevocable, and shall be wholly free from my individual control or direction. The moneys that shall be so paid over to the said [assignee] pursuant to this assignment shall be deemed income in her hands and she shall be regarded as substituted pro tanto as beneficiary for the year 1930 (to the extent of the said Thirty-six thousand dollars) in my place; * * *." (One of the identical forms of assignments used in the instant case is set out in full at R. 39-40 as Exhibit "B" to the complaint.)

The *Blair* decision holds that an assignment of a *part* of the income to accrue to a life tenant under a trust during his *entire* life is an assignment of a part of his "equitable interest" in the trust corpus. It follows, logically, that an assignment of a *part* of a life tenant's income to accrue during a *part* of his life (as in the case at bar) must likewise be an assignment of a part of his "equitable interest" in the trust corpus. We submit that the question of whether or not a *part* of the "equitable interest" has been assigned cannot depend upon the *quantum* (the amount of income or number of years) of the interest assigned. The lower Courts have refused to recognize any legal distinction between the *Blair* situation and facts similar to those in the instant case. See *Booth* v. *Commissioner,* 36 B. T. A. 141, affirmed 103 F. (2d) 1008 (C. C. A. 6th), and *Whitcomb* v. *Commissioner,* 37 B. T. A. 806, affirmed 103 F. (2d) 1009 (C. C. A. 6th).

Unless this Court is prepared to overrule the *Blair* case, it should refuse to grant the writ prayed for.

II.

HELVERING vs. CLIFFORD, 309 U. S. 331, HAS NO APPLICATION TO THE INSTANT CASE.

This Court stated the issue involved in the *Clifford* case to be "whether the grantor after the trust has been established may still be treated under this statutory scheme, as the owner of the corpus," and referred to the *Blair* case. *Helvering* v. *Clifford,* 309 U. S. 331, 334. The Court decided (p. 335) that it could not "conclude as a matter of law that respondent [assignor] ceased to be the owner of the corpus," and (p. 336) that, under all the facts and circumstances, it could not say that the triers of fact committed reversible error when they found

that the grantor remained the owner of the corpus, for the purposes of the taxing statute, notwithstanding the creation of the trust. That is all that was decided in the *Clifford* case.

In the instant case, the facts are undisputed—judgment was on the pleadings (R. 62). Each of the assignments was unconditional and irrevocable; the assignor reserved no rights whatsoever with respect thereto or with respect to the property interests assigned; and she ceased to be the owner of the assigned interests and specifically substituted the respective assignees for her, *pro tanto,* as life tenants or beneficiaries under the trust created by her husband's will. After the assignments she was, during the year covered by the assignments, no longer a beneficiary under the will—no longer the owner of the assigned property. In the case at bar, there was an absolute and complete disposition of the particular beneficial interests which were the subjects of the assignments.

Petitioner, in an attempt to make the facts of the instant case appear to be similar to those in the *Clifford* case, says (Petition, p. 7), referring to Respondent's assignments, that

> "The recipients of her generosity were equally members of the family group,"

and that

> "The assignment was merely a substitute for an expenditure that the taxpayer would ordinarily have made out of her own income; she retained all the rights of dominion that, in the absence of an assignment, were important to her."

There is no evidence in the record which even remotely supports these statements. As a matter of fact, the "recipients of her generosity" were not members of a family group within the meaning of the *Clifford* opinion, but were an adult son, two adult married daughters and

the husband of a deceased daughter. Respondent was under no legal or other obligation to support or make expenditures for the benefit of any of the assignees. Furthermore, as life tenant, Respondent had no control over the trust corpus, and she retained no rights of dominion over the portions of the trust estate assigned,—not even the rights of reverter which Blair retained.

The Government in its brief, filed in this Court in the *Clifford* case (October Term, 1939, No. 383), recognized that the *Clifford* situation was entirely different from that involved in the *Blair* case and that different rules should be applicable thereto.[3] In the case at bar, the facts are even stronger in favor of the Respondent than they were in the *Blair* case, since Respondent here did not even reserve to herself a right to the return of the assigned income in case of death of the assignees.

---

3. In its brief, filed in the *Clifford* case, the Government argued (pp. 19-20):

"*Blair* v. *Commissioner*, 300 U. S. 5, upon which respondent places great reliance, does not qualify our position. In that case the taxpayer, who was the life beneficiary of a testamentary trust, assigned certain income interests under the trust to his children, reserving to himself only the right to a return of those interests should the assignees predecease him. This Court held that he was not taxable on the income paid to his children by the trustees because each assignment was 'a complete transfer of the specified interest' (p. 13). *The decision, of course, is entirely inapplicable to the present case.* The taxpayer there had no command or control over the income-producing properties and he parted with his entire interest in the assigned income except for the possibility of reverter should he outlive the assignees. Here, on the other hand, the taxpayer had extensive rights of possession and control over the trust estate and he was to reacquire absolute ownership of the property after a short period of time. *It cannot realistically be said of the taxpayer in the Blair case that he retained any of the substantial attributes of ownership;* it cannot realistically be said of the taxpayer here that he retained anything less than the substantial equivalent of ownership." (Italics supplied.)

(At this point in the brief, the Government stated in a footnote that the decision of the Circuit Court of Appeals in *Horst* v. *Commissioner*, now pending in this Court on writ of certiorari, was opposed to the Government's general argument in the *Clifford* case.)

III.

BOTH HELVERING vs. HORST AND HELVERING vs. EUBANK INVOLVE SITUATIONS DIFFERENT FROM THAT WHICH WAS THE SUBJECT OF THE BLAIR DECISION AND WHICH IS THE SUBJECT OF THE CASE AT BAR.

This Court has granted certiorari in *Helvering* v. *Horst* (No. 27, 1940 Term), and a petition for certiorari is pending undisposed of (as of September 25) in *Helvering* v. *Eubank* (No. 205, 1940 Term). If the Court should ultimately reverse the Circuit Court of Appeals for the Second Circuit in either or both the *Horst* and *Eubank* cases, such reversals, nevertheless, would not require the Court to overrule or qualify its decision in the *Blair* case.

The *Horst* case (107 F. (2d) 906) involves an assignment of interest coupons, evidencing interest to become due in the future on bonds to which such coupons appertained. A part of the interest evidenced by the coupons had accrued prior to the date of transfer thereof. In any event, no property interest in the bonds (or corpus) from which the interest was derived (and no property interest whatsoever except property interest in the coupons which were merely physical evidence of the right to receive the interest accrued and to accrue on the bonds), was transferred.

The *Eubank* case (110 F. (2d) 737) involves an assignment of insurance renewal commissions, made *after* the commissions were earned. By the petition for certiorari therein, this Court, we assume, is asked to extend its earlier holding in *Lucas* v. *Earl*, 281 U. S. 111, discussed below (to the effect that personal *earnings*, assigned *prior* to the completion of the services or labor for which they are to be compensation, are taxable to the assignor and not to the assignee), to cover personal earnings assigned

subsequent to the performance of all services or labor in connection therewith. In the *Eubank* case, it is obvious, since the commissions arose out of personal services and were not derived from property, that there could not have been any assignment of any property interest.

In both the *Blair* case and the case at bar, however, the assignments effected transfers of a portion of the property interests of the respective assignors in the corpus of the respective trusts under which such assignors were life tenants. Because there was such transfer of a portion of the life tenant's interest in the trust corpus, the *Blair* case decided that the assignees, and not the assignor, were liable for tax on the income received under the assignments.

This Court may, therefore, hold that, under the facts in either or both of the *Horst* and *Eubank* cases, the tax in question is payable by the assignor and still hold that, under the facts in the *Blair* case and in the case at bar, the tax was properly taxable to, and paid by, the several assignees.

IV.

LUCAS vs. EARL, 281 U. S. 111, AND BURNET vs. LEININGER, 285 U. S. 136, ARE NOT APPLICABLE TO THE CASE AT BAR.

This Court decided both the *Lucas* case and the *Burnet* case prior to its decision in the *Blair* case, and, in its opinion in the *Blair* case, considered and distinguished both the *Lucas* and *Burnet* decisions.

In the *Lucas* case, attorney's fees, for services to be rendered in the future, were assigned, and this Court held that the tax law in question, properly construed, taxed compensation for personal services to the earner thereof regardless of any assignment.

In the *Burnet* case, a husband, who was a member of a

partnership, assigned future partnership income to his wife who, however, did not by virtue of the assignment became a member of the firm. This Court held that the applicable revenue act dealt explicitly with the liability of partners as such and that the husband, as a partner, remained liable for income taxes upon his distributive share of the partnership earnings.

The Court held that neither the *Lucas* decision nor the *Burnet* decision was in point or applicable to a situation such as was involved in the *Blair* case. See *Blair* v. *Commissioner*, 300 U. S. 5, 11.

Conclusion.

Petitioner has raised no questions which warrant review by this Court.

The decision of this Court, in *Blair* v. *Commissioner*, covers the facts and issues in the case at bar. The courts below properly applied the law, as laid down by this Court in the *Blair* case, and there is no conflict between the several circuits on the applicability of the *Blair* decision to facts such as those involved in the instant case. Neither *Helvering* v. *Clifford*, *Helvering* v. *Horst*, *Helvering* v. *Eubank*, *Lucas* v. *Earl*, nor *Burnet* v. *Leininger* involves facts or issues similar to those of either the *Blair* case or the instant case.

It is, accordingly, respectfully submitted that the petition for a Writ of Certiorari herein should be denied.

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IN THE

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No. 437

CARTER H. HARRISON,, COLLECTOR OF INTERNAL REVENUE FOR THE FIRST DISTRICT OF ILLINOIS,

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vs.

SARA H. SCHAFFNER,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENT.

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BLANK PAGE

INDEX.

CITATIONS.

Cases.

Treatise.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

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CARTER H. HARRISON, COLLECTOR OF INTERNAL REVENUE FOR THE FIRST DISTRICT OF ILLINOIS,

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Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENT.

Opinions Below.

The opinion of the District Court (R. 60) is not reported officially.

The opinion of the Circuit Court of Appeals for the Seventh Circuit (R. 69) is reported in 113 F. (2d) 449.

Jurisdiction.

The Circuit Court of Appeals entered judgment herein on June 17, 1940 (R. 75). The Petition for a Writ of Certiorari was filed on September 14, 1940 and granted on November 12, 1940.

The jurisdiction of this Court is based on Sec. 240(a) of the Judicial Code, as amended.

Summary of Argument.

There is no distinction in principle between the instant case and *Blair* v. *Commissioner*, 300 U. S. 5.

Under the *Blair* decision, a life beneficiary of a trust, who irrevocably assigns a specified amount of the income of the trust for the full term of the assignor's life, thereby transfers to the assignee an equitable interest in the corpus of the trust, and such assignee, and not the assignor, is liable for income tax on the assigned income.

In the instant case, Respondent, the life beneficiary under a testamentary trust, irrevocably assigned to several assignees specified amounts of the trust income which were to become payable during specific future years. By such assignments Respondent transferred to each of the assignees an interest in the trust corpus, and, therefore, her assignees, and not Respondent, are liable for income tax on the income so assigned.

ARGUMENT.

Blair v. Commissioner Is Controlling.

A Life Beneficiary of a Trust, Who Irrevocably Assigns a Portion of the Trust Income Payable During a Specific Future Year, Thereby Transfers to the Assignee a Part of the Life Beneficiary's Interest in the Trust Corpus, and the Assignor Is Not Liable for Income Tax on the Assigned Income.

In *Blair* v. *Commissioner*, 300 U. S. 5 (which, like the case at bar, arose in Illinois), this Court recognized and applied (300 U. S. at pp. 13-14) the following well-established principles:

(1) The life beneficiary of a trust is the owner of an equitable interest in the trust corpus.

(2) This equitable interest is present property alienable like any other property.

(3) Accordingly, the beneficiary may transfer a *part* of his interest in the trust *res*, as well as the *whole* thereof.

(4) Such a transfer is not an assignment of a chose in action, but of "right, title and estate in and to property."

Respondent submits that, under these principles, the assignments in the instant case transferred a part of Respondent's interest in the trust corpus to the several assignees and thus constituted the assignees owners of equitable interests in the trust corpus. Therefore, under the *Blair* case, Respondent is not liable for tax on the income assigned.[1]

---

[1] Petitioner does not contend that the *Blair* case should be overruled and this Court, in *Helvering* v. *Horst*, ... U. S. ....., 61 S. Ct. 144, cited the Blair decision with approval. It is submitted that a statement (which appears in the concurring opinion in *Huber* v. *Helvering*, 414 C. C. H. Fed. Tax Service, Par. 9224, decided by the Court of Appeals for the District of Columbia on January 27, 1941), to the effect that the ruling in the *Blair* case is no longer controlling, is erroneous. The *Huber* decision is discussed at page 7 of this brief.

In the *Blair* case the assignor, who was a life beneficiary of a testamentary trust, and, as such, the owner of a present alienable property interest in the trust corpus, made several assignments to his children. Each assignment transferred to the respective assignees a specified dollar amount of future income of the trust estate for a period limited by the life of the assignor. It was there held that the assignments, in effect, transferred to and vested in the respective assignees specified portions of the assignor's beneficial interest in the trust estate. Since the assignees became the owners of interests in the trust corpus, this Court held that they, and not the assignor, were the owners of, and taxable on, the income arising from such interests.

In the instant case, Respondent is likewise the life beneficiary of a testamentary trust, and, as such, is the owner of a present alienable property interest in the trust corpus. She irrevocably assigned to several children (and a son-in-law) specified dollar amounts of the trust income which would become payable in certain future years. Each of the assignments by its terms substituted the respective assignees *pro tanto* as beneficiaries of the trust, in lieu of the respondent, during the years specified in the several assignments.[2] Such assignments had the effect of transferring to, and vesting in, the respective assignees specified portions of Respondent's beneficial interest in the trust corpus. By each of the assignments Respondent carved out of her life estate, and gave to each of the assignees, a present property interest—in effect, an equitable estate or term for years.

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[2] Each of the assignments in the case at bar provided specifically that the respective assignee "shall be regarded as substituted *pro tanto* as beneficiary for the year * * * (to the extent of the said * * * dollars) in my place; * * *" (R. 40).

The assignments in the case at bar are set out in full at R. 39-48.

The assignments in the *Blair* case appear in the footnote at p. 658 of 83 Fed. (2d).

Under the law of Illinois, a valid conveyance of an equitable interest by a life beneficiary will have the same operation upon his equitable estate as a similar conveyance of a legal estate would have at law upon his legal estate. *Merchants Loan & Trust Co.* v. *Patterson,* 308 Ill. 519, 530. Equity treats such an *equitable* interest in property, just as the law treats a *legal* interest in property. *Brown* v. *Fletcher,* 235 U. S. 589, 599; 1 Scott on Trusts (1939), § 132. It is also settled, under the law of Illinois, that a life tenant may enter into a valid lease of, or create a term for years in, his property interest for any period less than his own life. *Peters* v. *Balke,* 170 Ill. 304, 315; *Powers* v. *Wells,* 244 Ill. 558, 569. If the estate or term created is for longer than the life of the life tenant, it is, nevertheless, good for the period of such life. See *Hoagland, et al.* v. *Crum,* 118 Ill. 365, 370; *Roberts* v. *McAllister,* 226 Ill. App. 356; *Woman's A. B. H. M. Society* v. *Rayburn,* 203 Ill. App. 577. Further, a term for years conveys a present interest in the property demised. *People* v. *Shedd,* 241 Ill. 155, 165; *People* v. *Chicago,* 335 Ill. 450, 453. It is, likewise, generally recognized that an equitable estate for years, similar to that transferred to the assignees under the assignments in the present case, is a "present property interest". See *Commissioner* v. *Field,* 42 Fed. (2d) 820, 822 (C. C. A. 2nd).

Respondent, by assigning portions of the income of her life estate for the years in question, vested in the respective assignees terms for years in portions of her equitable estate in the trust corpus, and Respondent's interest became subject to the outstanding interests carved out of her greater property interest by the assignments. Such assignees, accordingly, had the right to enforce the payment to them of the income specified in the several assignments, and could also "maintain a suit against the trustee to enforce the trust or to enjoin or obtain redress for a breach of trust." 2 Scott on Trusts (1939), § 200.3.

See, also, R. 40 for specific terms of assignments, which substituted assignees as beneficiaries *pro tanto*. Since the assignees became the present owners of the property interests which produced the income, had the right to receive (and did in fact receive) the assigned income by virtue of such ownership, and possessed the remedial rights necessary to enable them to enforce payment of such income, they "became the owners of the specified beneficial interests in the income, and * * * as to these interests they and not the [Respondent] were taxable." *Blair* v. *Commissioner*, 300 U. S. 5, 14.

The Circuit Court of Appeals recognized no difference in substance between the *Blair* case and the instant case, saying (R. 72):

> "* * * If an irrevocable assignment of a part of the income from an irrevocable existing trust for an uncertain period such as the life of the assignor transfers a property interest in the corpus, we see no reason why the assignment of a certain specified portion of such income for a specific period, one or two years, does not work the same result. If one is an interest in the corpus so likewise must be the other. The one may exist for thirty days or twenty years. The other will exist definitely for a year. Any difference is one of quantum, not of quality. There is no legal difference in the subject matter of what is assigned in the two instances. In each the assigned portion is part and parcel of the whole, and, under the language of the Supreme Court, an alienable equitable property interest."

Since, in the case at bar as in the *Blair* case, Respondent divested herself of portions of her beneficial interest in the trust corpus, the situation is unlike that presented in *Helvering* v. *Horst*, ... U. S. ....., 61 S. Ct. 144, where the taxpayer, after transferring certain interest coupons, still retained his entire interest in the bonds, which were the property producing the assigned income. Accordingly, the distinctions recognized by this Court in the *Horst* case, in differentiating the *Blair* case, likewise distinguish the

Horst case from the instant case. There are the same distinctions between the case at bar and the *Eubank* and other decisions cited on page 7 of Petitioner's brief.

Contentions similar to those now made by Petitioner in the present case were rejected in *Booth* v. *Commissioner,* 36 B. T. A. 141, and in *Whitcomb* v. *Commissioner,* 37 B. T. A. 806.

In the *Booth* case a life beneficiary of a trust assigned one-half of her interest in a trust by an assignment which provided that it could be terminated by the assignor at any time after the expiration of the taxable year within which notice was given; the assignment was revoked. The Board of Tax Appeals held that the assignee, and not the assignor, was subject to tax on the income paid to the assignee while the assignment was in force. The Circuit Court of Appeals for the Sixth Circuit affirmed the decision of the Board, in a *per curiam* opinion, upon the grounds and for the reasons stated in the opinion of the Board. *Commissioner* v. *Booth,* 103 Fed. (2d) 1008.

In the *Whitcomb* case, involving the same trust as was involved in the *Booth* case, the life beneficiary assigned one-half of her interest in the trust with the right to revoke the assignment by giving notice twelve months and one day prior to the effective date of such revocation. The assignment was revoked. The Board again held that the assignor was not liable for tax on the income of the trust received by the assignee during the period the assignment was in force. The Circuit Court of Appeals for the Sixth Circuit, in a *per curiam* opinion, affirmed the Board. *Commissioner* v. *Whitcomb,* 103 Fed. (2d) 1009.

The only decision, of which we are aware and which may be cited in support of Petitioner's argument, is the very recent decision of the Court of Appeals for the District of Columbia in *Huber* v. *Helvering,* 414 C. C. H. Fed. Tax Service, Par. 9224 (decided January 27, 1941). In that

case, a *settlor* who had created a spendthrift trust, retaining a life interest in the income, instructed the trustee in several different years to transfer income, which was to accrue in future years, to corpus in lieu of paying such income to him, the settlor-life beneficiary. The settlor contended that the income transferred by the trustee to corpus, pursuant to the settlor's instructions, and not paid over to the settlor in accordance with the terms of the trust, was not taxable to him, and, in support of this contention, relied upon the *Blair* case. The majority opinion concluded that the *Blair* case should be limited to a situation where a life beneficiary of a trust transfers all or part of his interest for the full term of his life, although there is no intimation whatsoever, express or implied, in the *Blair* case that a life tenant who assigns all or a part of the income for a term *less* than his life is taxable on the income so assigned. As above noted, the concurring opinion was based upon a conclusion that the recent decision of this Court in the *Horst* case made the rule in the *Blair* case no longer controlling. This conclusion, too, appears unjustified, since in the *Horst* case this Court clearly recognized the authority of the *Blair* case, and merely distinguished the facts of the *Horst* case from the situation in the *Blair* case. In any event, the *Huber* case involves facts which are strikingly different from those now before this Court. There, the life beneficiary, who was also the settlor of the trust, merely caused income for particular years to be retained by the trustee and added to principal, and did not, as in the instant case and in the *Blair* case, transfer a part of his interest in the trust corpus to an assignee, who received and enjoyed the income from such transferred interest. As the Court of Appeals of the District of Columbia said, in the *Huber* case, the beneficiary would profit in future years by receiving the income from the earlier accruing income which had been added to the principal pursuant to his directions. The settlor-beneficiary

furthermore, had the right under certain conditions to require payment to him of portions of the corpus of the trust, which would include, among other property, the income added to corpus.

Conclusion.

It is respectfully submitted that *Blair* v. *Commissioner* is not distinguishable in principle from the case at bar and is controlling, and that the decision of the court below was correct and should be affirmed by this Court.

Respectfully submitted,

CARL MEYER,
HERBERT A. FRIEDLICH,
LOUIS A. KOHN.

BLANK PAGE

SUPREME COURT OF THE UNITED STATES.

No. 437.—October Term, 1940.

Carter H. Harrison, Collector of Internal Revenue for the First District of Illinois, Petitioner,
vs.
Sarah H. Schaffner.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[March 31, 1941.]

Mr. Justice Stone delivered the opinion of the Court.

In December, 1929, respondent, the life beneficiary of a testamentary trust, "assigned" to certain of her children specified amounts in dollars from the income of the trust for the year following the assignment. She made a like assignment to her children and a son-in-law in November, 1930. The question for decision is whether, under the applicable 1928 Revenue Act, 45 Stat. 791, the assigned income, which was paid by the trustees to the several assignees, is taxable as such to the assignor or to the assignees.

The Commissioner ruled that the income was that of the life beneficiary and assessed a deficiency against her for the calendar years 1930 and 1931, which she paid. In the present suit to recover the tax paid as illegally exacted the district court below gave judgment for the taxpayer, which the Court of Appeals affirmed. 113 F. (2d) 449. We granted certiorari November 12, 1940, to resolve an alleged conflict in principle of the decision below with those in *Lucas* v. *Earl,* 281 U. S. 111; *Burnet* v. *Leininger,* 285 U. S. 136, and *Helvering* v. *Clifford,* 309 U. S. 331.

Since granting certiorari we have held, following the reasoning of *Lucas* v. *Earl, supra,* that one who is entitled to receive at a future date, interest or compensation for services and who makes a gift of it by an anticipatory assignment, realizes taxable income quite as much as if he had collected the income and paid it over to the object of his bounty. *Helvering* v. *Horst,* 311 U. S. 112; *Helvering* v. *Eubank,* 311 U. S. 122. Decision in these cases was

rested on the principle that the power to dispose of income is the equivalent of ownership of it and that the exercise of the power to procure its payment to another, whether to pay a debt or to make a gift, is within the reach of the statute taxing income "derived from any source whatever". In the light of our opinions in these cases the narrow question presented by this record is whether it makes any difference in the application of the taxing statute that the gift is accomplished by the anticipatory assignment of trust income rather than of interest, dividends, rents and the like which are payable to the donor.

Respondent, recognizing that the practical consequences of a gift by assignment, in advance, of a year's income from the trust, are, so far as the use and enjoyment of the income are concerned, no different from those of the gift by assignment of interest or wages, rests his case on technical distinctions affecting the conveyancing of equitable interests. It is said that since by the assignment of trust income the assignee acquires an equitable right to an accounting by the trustee which, for many purposes, is treated by courts of equity as a present equitable estate in the trust property, it follows that each assignee in the present case is a donee of an interest in the trust property for the term of a year and is thus the recipient of income from his own property which is taxable to him rather than to the donor. See *Blair* v. *Commissioner*, 300 U. S. 5.

We lay to one side the argument which the Government could have made that the assignments were no more than an attempt to charge the specified payments upon the whole income which could pass no present interest in the trust property. See Scott on Trusts, §§ 10.1, 10.6, 29, 30. For we think that the operation of the statutes taxing income is not dependent upon such "attenuated subtleties", but rather on the import and reasonable construction of the taxing act. *Lucas* v. *Earl*, *supra*, 114.

Section 22(a) of the 1928 Revenue Act provides, " 'Gross income' includes gains, profits, and income derived from . . . interest, rent, dividends, securities or the transaction of any business carried on for gain or profit, or gains or profits, and income derived from any source whatever". By §§ 161(a) and 162(b) the tax is laid upon the income "of any kind of property held in trust", and income of a trust for the taxable year which is to be distributed to the beneficiaries is to be taxed to them "whether distributed to them or not". In construing these and like provisions in other revenue acts

we have uniformly held that they are not so much concerned with the refinements of title as with the actual command over the income which is taxed and the actual benefit for which the tax is paid. See *Corliss* v. *Bowers*, 281 U. S. 376; *Lucas* v. *Earl*, *supra*; *Helvering* v. *Horst*, *supra*; *Helvering* v. *Eubank*, *supra*; *Helvering* v. *Clifford*, *supra*. It was for that reason that in each of those cases it was held that one vested with the right to receive income did not escape the tax by any kind of anticipatory arrangement, however skillfully devised, by which he procures payment of it to another, since, by the exercise of his power to command the income, he enjoys the benefit of the income on which the tax is laid.

Those decisions are controlling here. Taxation is a practical matter and those practical considerations which support the treatment of the disposition of one's income by way of gift as a realization of the income to the donor are the same whether the income be from a trust or from shares of stock or bonds which he owns. It is true, as respondent argues, that where the beneficiary of a trust had assigned a share of the income to another for life without retaining any form or control over the interest assigned, this Court construed the assignment as a transfer *in praesenti* to the donee, of a life interest in the corpus of the trust property and held in consequence that the income thereafter paid to the donee was taxable to him and not the donor. *Blair* v. *Commissioner*, *supra*. But we think it quite another matter to say that the beneficiary of a trust who makes a single gift of a sum of money payable out of the income of the trust does not realize income when the gift is effectuated by payment, or that he escapes the tax by attempting to clothe the transaction in the guise of a transfer of trust property rather than the transfer of income where that is its obvious purpose and effect. We think that the gift by a beneficiary of a trust of some part of the income derived from the trust property for the period of a day, a month or a year involves no such substantial disposition of the trust property as to camouflage the reality that he is enjoying the benefit of the income from the trust of which he continues to be the beneficiary, quite as much as he enjoys the benefits of interest or wages which he gives away as in the *Horst* and *Eubank* cases. Even though the gift of income be in form accomplished by the temporary disposition of the donor's property which produces the income, the donor retaining every

other substantial interest in it, we have not allowed the form to obscure the reality. Income which the donor gives away through the medium of a short term trust created for the benefit of the donee is nevertheless income taxable to the donor. *Helvering* v. *Clifford, supra; Hormel* v. *Helvering,* No. 257, decided March 17, 1941. We perceive no difference, so far as the construction and application of the Revenue Act is concerned, between a gift of income in a specified amount by the creation of a trust for a year, see *Hormel* v. *Helvering, supra,* and the assignment by the beneficiary of a trust already created of a like amount from its income for a year.

Nor are we troubled by the logical difficulties of drawing the line between a gift of an equitable interest in property for life effected by a gift for life of a share of the income of the trust and the gift of the income or a part of it for the period of a year as in this case. "Drawing the line" is a recurrent difficulty in those fields of the law where differences in degree produce ultimate differences in kind. See *Irwin* v. *Gavit,* 268 U. S. 161, 168. It is enough that we find in the present case that the taxpayer, in point of substance, has parted with no substantial interest in property other than the specified payments of income which, like other gifts of income, are taxable to the donor. Unless in the meantime the difficulty be resolved by statute or treasury regulation, we leave it to future judicial decisions to determine precisely where the line shall be drawn between gifts of income-producing property and gifts of income from property of which the donor remains the owner, for all substantial and practical purposes. Cf. *Helvering* v. *Clifford, supra.*

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.